THE

MADRAS LAW JOURNAL

I] JANUARY [1968

MARCH OF LAW, 1967.

INTRODUCTION.

The theory of judicial precedents which takesroot in British jurisprudence and is being followed in the Commonwealth countries including India has been relaxed in the very country of its origin. The " Practice Statement (Judicial Precedents) " issued by the House of Lords recites[1]: " Their Lordships. , recognise that rigid adherence to precedent maylead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so. In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law. The announcement is not intended to affect the use of precedents elsewhere than in this House ". In the case of the Judicial Committee of the Privy Council, the theory of precedents had never been rigidly followed inasmuch as the decisions of that body were only in the form of advice to the Crown. In our country also, the decision of the Supreme Court in *Bengal Immunity Co.* v. *State of Bihar*[2], held that there was nothing in the Constitution that prevented the Supreme Court from departing from a previous decision of its own if it was satisfied of its error and of it baneful effect on the general interest of the public.[3] Outside the Supreme Court, however, the theory of judicial precedents is to be fully respected. In *Kamalammal* v. *Venkatalakshmi Ammal*[4], characterising the course adopted by a single Judge of the High Court in not feeling bound by a decision of a Full Bench of that Court for various reasons as " somewhat surprising ", the Supreme Court observed : " We cannot but deprecate the practice as it tends to destroy the certainty of the law which the theory of judicial precedents seeks to establish ". In *Shama Rao* v. *Union Territory of Pondichery*[5] the Supreme Court holds that a decision is binding only in regard to its ratio and the principle laid down therein and that where there was a divergence of opinion except for the conclusion no general principle can be deduced on which the maxim of *stare decisis* can be taken as binding for future cases. The degree in which the operation of judicial precedents has been modified in respect to the Supreme Court is brought out vividly in what might be called the " decision of the year " in *Golak Nath* v. *State of Punjab*[6], holding (by a majority) that the fundamental rights cannot be repealed or abridged even by a constitutional amendment, that the procedures

1. *See* (1966) 1 W.L.R. 1234.
2. 1955 S.C.J. 672 : (1955) 2 S.C.R. 603 : (1955) 2 M.L.J. (S.C.) 168.
3. *See* Judgment of the Supreme Court in Crl. App. No. 193 of 1964, referred to in (1967) 2 S.C.J. 486, 514.
4. (1965) 2 S.C.J. 638, 649.
5. (1967) 2 M.L.J. (S.C.) 98.
6. (1967) 2 S.C.J. 486.

of Article 368 cannot be used for that purpose, and that the first, fourth and the seventeenth Amendments to the Constitution are void, but that they would be inoperative only with effect from the date of the decision and not with reference to the dates of their passing. Subject however to the limitations stated as above in regard to precedents, the theory of judicial precedents flourishes. During the year under review, about 54 decisions of the Supreme Court have been reported in the columns of this Journal apart from almost all the important decisions of our High Court. An attempt is made hereunder to notice the decisions so rendered under some of the familiar and important titles of law.

COURTS : THEIR JURISDICTION AND POWERS.

In *Rethinaswamy, In re*[1], it is held that the High Court of Madras, under section 10 of the Pondichery (Administration) Act, 1962, and as inheritor of the powers of *Cour de Cessation* (Paris) has jurisdiction to interfere with the majority verdict of the jury and the sentence inflicted by the Tribunal Criminal, Karaikal. *Jhun Jhunwala Bros.* v. *Subbaramier*[2], makes it clear that it is now an established position. in law that where there are more Courts than one which will have jurisdiction to try a particular cause it is open to the parties to agree that only one of those Courts shall have jurisdiction to try the same, and that where the terms of a contract clearly say that it is " subject to the jurisdiction of Cuttack Courts only" other Courts will have no jurisdiction to entertain the suit even though part of the cause of action has arisen within their jurisdiction. *Palaniappa* v. *Krishnamurthy*[3], lays down that an order granting leave to sue *in forma pauperis* made by a single Judge of the High Court is a 'judgment' within the meaning of clause 15 of the Letters Patent.

THE BAR : ITS RIGHTS AND DUTIES.

In *Karuthiah, In re*[4], it is made clear that there is no bar to an Advocate cited as a witness for the prosecution appearing for the accused where he had already been engaged by the accused and had surrendered him to the Magistrate for the purpose of moving for bail, after having accepted the brief and the prosecution could not say how the evidence of the Advocate would be relevant or material for establishing the prosecution case. *Jacob A. Chakramakkal* v. *Welliampathy Estate Labour Congress*[5], points out that an Advocate other than an Advocate on record can claim by a regular suit fees due from a party for services rendered in connection with a case before the Supreme Court inasmuch as the Rules of the Supreme Court did not provide a machinery for realisation of the fees from the clients in such cases.

CONSTITUTIONAL LAW.

In *Shama Rao* v. *Union Territory of Pondichery*[6], the Suprme Court makes it clear that where the principal Act was still-born and void *ab initio* no Amendment Act can revive such an Act, and where a legislature abdicated its legislative power and an act passed by another legislature on jurisdiction was adopted extending it to the territory under its jurisdiction mechanically its action is wholly invalid In *Sadasiva Reddi* v. *Chancellor, Osmania University*[7], the Supreme Court holds that section 5 of the Osmania University (Second Amendment) Act (A.P. Act XI of 1966) introducing section 13-A in the Osmania University Act, 1959, providing for the termination of the tenure of office of the existing Vice-Chancellor to 60 days from the commencement of the Second Amendment Act is violative of Article 14 of the Constitution and as such has to be struck down. *Sri Hindu Bala Patasala* v. *D.P.I., Madras*[8], decides that a threat of withdrawal of recognition of a school by the State Government, in case of non-compliance with an executive order made by it in violation of statutory provisions, would not amount to a deprivation of the right to

1. (1967) 2 M.L.J. 276.
2. (1967) 1 M.L.J. 299.
3. (1967) 2 M.L.J. 1 (F.B.).
4. (1967) 2 M.L.J. 459.
5. (1967) 1 M.L.J. 292.
6. (1967) 2 M.L.J. (S.C.) 98.
7. (1967) 2 M.L.J. (S.C.) 44.
8. (1967) 2 M.L.J. 138.

property and fundamental freedom under Article 19 (1) (*f*) or of the right to practice any profession or to carry on any occupation or business guaranteed under Article 19 (1) (*g*). *Collector of Customs* v. *Bhirumal Pahaljani*[1], holds that to bring a statement recorded by an officer during enquiry within the prohibition of Article 20 (3) the person concerned whose statement has been recorded must have stood in the character of an accused at the time he made the statement; that it is not enough that he may become an accused any time subsequently; and therefore, the bar under the Article will not apply to statements recorded from a person during an investigation by the Customs Official under sections 107 and 108 of the Customs Act at a time when the deponent did not stand in the position of an accused. *Subbachariar* v. *State of Madras*[2], points out that it cannot be said that the reduction in the income of religious institutions and mutts under the provisions of a statute relating to land reforms affect the fundamental rights of those institutions guaranteed under Articles 25 and 26, even if, by such reduction of income, the institutions will not have enough income to maintain themselves and to perform their religious obligations; that the constitutional guarantee protects only the freedom of religious opinion and acts in pursuance of religion; that while the State cannot regulate the religious practices there is no bar against statutes affecting activities of religious bodies of an economic or commercial character for the reason that they may affect the income of such bodies; and that Article 26 guarantees to religious denominations only the right to acquire and own property and administer the same in accordance with law but does not prevent properties belonging to a religious body being acquired by authority of law. *Subbachari's case*[2] further decides that the Madras Inams Estates (Abolition and Conversion into Ryotwari) Act, 1963, the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, and the Madras Leaseholds (Abolition and Conversion into Ryotwari) Act, 1963, are fully covered by Article 31-A as amended by the Constitution (Seventeenth Amendment) Act, 1964, and having received the assent of the President are fully protected from attack regarding their constitutionality on the score of any of the provisions of the Acts being violative of the fundamental rights guaranteed under Articles 14, 19 and 31; that Article 31-A itself proceeds on the basis that the law may be void as inconsistent with or taking away or abridging the rights conferred under Articles 14, 19 and 31; that once the absence of legislative competence from violations of those Articles is cured by the President's assent the law cannot be challenged as a fraud on power; that though the broad principles on which the assent of the President is intended to be given or withheld from a reserved Bill may be deducible they are not specifically laid down in the Constitution; and as such, it will not be open to the Courts to question the propriety of the President's action; and that it is the subjective opinion of the President that leads to the assent and it is not justiciable. *Krishnaraju Reddiar* v. *Authorised Officer*[3], holds that the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 has become a valid piece of legislation from its inception after its inclusion in the Ninth Schedule, by the Constitution (Seventeenth Amendment) Act, 1964; that Article 31-B is not merely a subsequent amendment of the Constitution removing with retrospective effect the ban or prohibition under Article 13 (2) but is itself expressly validating the Acts and Regulations specified in the Ninth Schedule; that the intention of the Article is to revive and validate both the Acts and Regulations within the purview of Article 13 (1) and (2); that the language of Article 31-B quite clearly and appropriately gives effect to such intention; that the validation of the Acts and Regulations is not confined only to those of them already struck down by the Courts but extends to all of them specified in the Ninth Schedule; and that as a natural consequence the rules made thereunder also get automatically validated. *Gobalousamy* v. *Union Territory of India*[4], states that the executive power of the Union, namely, the power of the President extends to the matters with respect to which Parliament has power to make laws, and the general executive power conferred by

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1. (1967) 1 M.L.J. 408 (F.B.).
2. (1967) 1 M.L.J. 206.
3. (1967) 1 M.L.J. 179
4. (1967) 2 M.L.J. 85.

Article 73 (1) (*a*) read with Article 246 (4) validates the promulgation of the Pondichery Judicial Officers (Qualification) Rules, 1963. In *V. G. Row* v. *Krishnaswamy Reddy*[1], and *V. G. Row* v. *Alagiriswamy*[2], it is held that a certificate under Article 132 (1) to enable the petitioner to appeal to the Supreme Court from a judgment in a writ petition could not be granted even if the question was one of importance where the matter was not of such urgency that the normal venue of appeal to a division Bench of the High Court should be side-tracked. In *Saravanabhavan* v. *State of Madras*[3], the Supreme Court by a majority judgment lays down that in a criminal appeal by Special Leave the Supreme Court will not reassess the evidence at large, particularly when it has been concurrently accepted by the High Court and the Court or the Courts below ; and therefore, before the Supreme Court intereferes, something more must be shown such as that there has been in the trial a violation of the principles of natural justice, or a deprivation of the rights of the accused, or a misreading of vital evidence, or an improper acceptance or rejection of evidence which, if discarded or received, would leave the conviction unsupportable, or that the Court or Courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed. *Shivasankara Mehta* v. *Election Commission*[4], states that the jurisdiction to decide the question of disqualification under Article 191 (1) as where a legislative Council member is adjudged insolvent, vests exclusively in the Governor and no Court has got jurisdiction to go into it, whether in writ proceedings or otherwise. *V. G. Row* v. *Krishnaswamy Reddy*[1], and *V. G. Row* v. *Alagiriswamy*[2], makes it clear that Article 217 (2) (*b*) does not in terms require that before an Advocate can be appointed as a Judge of the High Court he should have for at least 10 years been practising in that or any other High Court; that it would suffice if he were entitled to practise in a High Court for the requisite period; and that there is no justification for classifying the Advocates who are entitled as of right to practice in the High Court into persons actually practising in the High Court and persons not actually so practising for the purpose of Article 217. *Vasantha Pai* v. *Ramachandra Iyer*[5], points out that under Article 217 (3) as amended by the Constitution (Fifteenth Amendment) Act, 1963, the jurisdiction and power to determine the question regarding the age of a Judge of a High Court is vested exclusively in the President, and the jurisdiction cannot be exercised by any Court in the land including the High Courts and the Supreme Court, even if they are called upon to exercise the writ provisions; that conferring of exclusive jurisdiction on a particular body or authority to decide a particular matter under a particular provision of the Constitution so as to exclude jurisdiction under other enactments as well as under other provisions of the Constitution can be effected not merely by the device of using a *non-obstante* clause but also by the use of other appropriate provisions; that the use of the words 'shall be decided by the President' in Article 217 (3) is sufficiently peremptory in character to support an inference of the conferment of exclusive jurisdiction on the President and the exclusion of all other jurisdictions including that of a writ under Article 226; and the fact that a person is in receipt of a pension is not a ground for the issue of a writ of *quo warranto*, when he has ceased to hold any office. *Larsen and Toubro Ltd.* v. *Joint Commercial Tax Officer*[6] expresses the view that the jurisdiction under Article 226 is not appellate and is no substitute for other ordinary remedies at law; that the original jurisdiction under the Article is not as wide as that in the trial of suits; that where without finding of facts on evidence it is not possible or would be premature to decide a question raised by the aggrieved party, the extraordinary jurisdiction under the Constitution will not be exercised; that if equally expeditious and efficacious remedies are available it will be a strong factor dissuading the entertainment of a petition under the Article; and that there are however exceptions justified by special circumstances like a question of *vires* of a statute, or rules, or patent error of jurisdiction, or error of law apparent on the face of the record, obvious bias and violation of fundamental rights

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1. (1967) 1 M.L.J. 8.
2. (1967) 1 M.L.J. 10.
3. (1967) 1 M.L.J. (S.C.) 129.
4. (1967) 2 M.L.J. 607.
5. (1967) 2 M.L.J. 151.
6. (1967) 2 M.L.J. 552.

or principles of natural justice. *All India Sai Samaj* v. *Dy. Commissioner, H. R. & C.E.*[1], lays down that the objection that an interlocutory order cannot be challenged in a writ is without substance, that where the very applicability of the legislation, (Madras Act XXII of 1959) is questioned and *prima facie* there is material to support the contention, the mere fact that an alternative remedy might have been pursued cannot deprive the petitioner of his right to approach the Court under Article 226. In *Cumbum Roadways, Ltd.* v. *Somu Transport Ltd.*[2], the Supreme Court holds that when an order passed by the State Transport Appellate Tribunal in appeal from an order of the Regional Transport Authority granting permit is challenged in the High Court under Article 226 and the High Court feels that the matter should be remanded for fresh disposal, the remand need not necessarily be made to the original authority which has the power to grant the permit, namely, the Regional Transport Authority; that it is always a question to be decided in each case whether a remand should be to the State Transport Appellate Tribunal or to the Regional Transport Authority, though in most cases it would be proper if the remand is made to the State Transport Appellate Tribunal; and that where from an order passed by the Regional Authority granting a permit to a certain applicant in a certain route several appeals are filed by the several disappointed applicants to the State Transport Appellate Tribunal, and from the decision given in such appeals by a consolidated order only one of the appellants before that body initiates writ proceedings in the High Court challenging the appellate order and the High Court decides to remand the case for fresh disposal of the matter according to law, the remand should be confined to the parties before the High Court in the writ proceedings and the High Court cannot direct that all the appeals disposed by the impugned order should be revived and reheard. *Ramiah* v. *State Bank of India*[3], makes it clear that as regards the amplitude of the power of the High Courts under Article 226 the matter cannot be disposed of merely as the aggregate of the prerogative writs of the United Kingdom; that the terms of Article 226 are more comprehensive and the English decisions though indisputably of great value may not be literally followed as exhausting the content of the power under Article 226; that such authorities as the State Bank of India which derive their existence from statutes and in which the State has considerable proprietary interest are public authorities within the scope of Article 226; and that a breach of contract by an employee even if the employer be a statutory body gives rise only to a claim in damages and cannot be canvassed in writ jurisdiction. *Kannan* v. *E. S. I. Corporation*[4], lays down that a single writ petition filed by a federation of employees on behalf of a number of employees is not maintainable and each of the persons aggrieved should file a separate writ petition. *Senthivelu* v. *Southern Railway*[5], holds that the High Court in the exercise of its writ jurisdiction cannot interfere with the jurisdiction vested by statute in an administrative agency; that the Court can always look at the surrounding circumstances to consider whether the impugned decision is reasonable and revise it if it is palpably unreasonable and no reasonable authority or administrative agency could come to that decision without contravening the purpose and exceeding the power of the statute; and that if, it is an act inspired by a partisan spirit or done in the interest of a third party, certainly the Court can interfere. *T. P. Sokkalal Ramsait Factory Ltd.* v. *D. C. T. O.*[6], points out that the High Court will decline to act under Article 226 to quash an order of assessment or reassessment for which statutory remedies are available; that no one can be allowed to bypass those remedies and resort to the High Court unless a question of *vires* of a statute or rule or error of jurisdiction is involved; and that occasionally when patent injustice appears to have been done, and compelling the aggrieved party to resort to statutory remedy will involve not only long delay but harassment it will be in the discretion of the Court to entertain the petition under Article 226. *Varghese & Co.* v. *Joint Commercial Tax Officer*[7], decides that

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1. (1967) 2 M.L.J. 618.
2. (1967) 1 M.L.J. (S.C.) 17.
3. (1967) 2 M.L.J. 519.
4. (1967) 2 M.L.J. 212.
5. (1967) 2 M.L.J. 297.
6. (1967) 2 M.L.J. 405.
7. (1967) 2 M.L.J. 134.

the argument that once an appeal was filed against the final assessment, which had been passed during the pendency of a writ petition against a provisional assessment, the purpose of the writ becomes infructuous and the petitioner could not thereafter pursue the writ and attack the provisional assessment is untenable. *Ratan Chand Chordia* v. *Special Assistant Commercial Tax Officer*[1], expresses the view that the determination of the true nature of a transaction, whether the property in the possession of the hirer belongs to him or the original owner thereof or the financier, cannot be done in a writ proceeding where there is not much scope for calling evidence at great length; and that the party should seek his remedy in independent civil proceedings. *Arunachalam Pillai* v. *R. D. O., Koilpatti*[2], points out that a failure to follow the procedure laid down by the statute under which an enquiry was held against a village officer will vitiate the order of punishment that may be passed, and the failure to give an opportunity to the Government servant to show cause against the punishment proposed to be imposed after taking into account the gravity of the offence etc., will amount to a denial to him of reasonable opportunity. *Muthuswamy Ambalagarar* v. *Board of Revenue*[3], lays down that when a revision is filed to the Board of Revenue under B.S.O. No. 156-A, against the appointment of a candidate as a village headman, it is not open to the Board to go into the merits and make a comparative estimate of the qualifications of the rival candidates and to decide in favour of the candidate who, according to it, was the best qualified; and that such an order will be without jurisdiction liable to be quashed under Article 226. *Subrahmanyam Chetty* v. *Authorised Officer, Land Ceilings*[4], expresses the view that where the contention is that an institution is a public trust and as such outside the purview of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961, a writ petition to restrain the authorities from proceeding under its provisions would be incompetent, and the proper remedy would be to file a suit for a declaration of the character of the institution with consequential reliefs. In *Singareni Collieries Co., Ltd.* v. *Commissioner of Commercial Taxes*[5], the Supreme Court makes it clear that the expression 'actually delivered' in the Explanation to Article 286 (1) does not include mere symbolic or notional delivery; that the rule in section 39 (1) of the Sale of Goods Act, 1930 has no application in dealing with a constitutional provision which, while imposing a restriction upon the legislative power of the States, entrusts exclusive power to levy sales tax to the States in which the goods have been actually delivered for purposes of consumption; that it is immaterial whether the property in the goods passed in the State from which the goods were despatched; and that the determination of the State in which the sale shall be deemed to have taken place is artificially made by the delivery for the purpose of consumption not by the terms of the contract of sale nor by the legal concept of passing of property in the goods sold. *Larsen and Toubro Ltd.* v. *Joint Commercial Tax Officer*[6], holds that Article 301 for its purposes recognises no State borders; and trade, commerce and intercourse should flow as if the State barriers were not there and the entire territory of India is one integral unit from the economic, social and political points of view; that the only exception to the ban of discrimination or preference under Article 303 (1) is the one mentioned in Article 303 (2); that even if the Central taxation provision is a reasonable provision in public interest it may still be open to challenge on the ground of discrimination unless such a discrimination was permissible under section 303 (2); and that it must be taken to be well-established that (*i*) the freedom guaranteed by Article 301 is not to be interpreted as to its scope and ambit in the light of the other provisions in Part XIII of the Constitution and it is wide and absolute except for such restrictions subject to specified conditions as are to be found in provisions other than Article 301 in Part XIII, (*ii*) fiscal laws clearly fall within the ambit of Article 301, (*iii*) the restrictions contemplated in Part XIII do not however include regulatory or compensatory measures, and (*iv*) the last words in Article 303 (1) are not restricted as to the topic of law under particular heads, but any law made by

1. (1967) 1 M.L.J. 352.
2. (1967) 1 M.L.J. 279.
3. (1967) 1 M.L.J. 247.
4. (1967) 1 M.L.J. 313.
5. (1967) 1 M.L.J. (S.C.) 110.
6. (1967) 2 M.L.J. 552.

Parliament by virtue of any entry imposing discriminatory restrictions contemplated by Article 303 (1) would be bad under it. In *State of Madras* v. *Srinivasan*[1], the Supreme Court points out that the assumption in Madras G.O.No. 902, dated 28th May, 1908, that a public servant can be punished even without proof of any corrupt practice if the cumulative evidence available against him, that he was suspected in a number of instances to be corrupt or was generally believed to be corrupt is open to serious objection; that the Government is not bound to state its reasons when accepting the finding of the Tribunal for disciplinary proceedings; and that it could not be claimed as a matter of law that the Government cannot impose a penalty without giving reasons. In *Jeevaratnam* v. *State of Madras*[2], the Supreme Court decides that when a civil servant is suspended pending enquiry into charges against him and is subsequently dismissed with effect from the date of suspension such an order is one of dismissal from the date of the order with the super-added direction that it should operate retrospectively from the date of suspension; that even if the latter direction was invalid the first part of the order could still be carried out; and that though the Court cannot pass a new order of dismissal, it can give effect to the valid and severable part of the order. *Coimbatore-Salem Transports Ltd.* v. *Its Workmen*[3], holds that as the power exercised by an arbitrator even in a voluntary reference under section 10-A, Industrial Disputes Act is a quasi judicial one and his decisions have the effect of affecting the rights of parties *inter se* the award will be subject to the jurisdiction of the High Court under Article 226. In *Indian Chemical and Pharmaceutical Works* v. *State of Andhra Pradesh*[4], the Supreme Court points out that a substance which is a drug may fall under the Dangerous Drugs Acts if it is defined there and it may also fall under the Drugs Act and be subject to its provisions; that, at the same time, it may fall under Entry 51 in List II of the Seventh Schedule in case it is a narcotic or narcotic drug; and thus, even if a substance is governed by the two Central Acts referred to, it may well be liable to duties of excise under Entry 51 of List II and to such control as is incidental thereto.

INDUSTRIAL DISPUTES ACT.

In *Workmen of T. T. E. S. Ltd.* v. *Industrial Tribunal*[5], it is held that the basis of justifying the payment of bonus in any industry is that both capital and labour contribute to the earnings of the concern and that it is therefore fair that labour should derive some benefit if there is a surplus after meeting prior or necessary charges; that the formula evolved by the Labour Appellate Tribunal and explained by the decisions of Courts to determine the available surplus is that certain prior charges such as provision for depreciation, rehabilitation, return on paid up capital, return on working capital, payment of income tax,etc., should be deducted from the gross profits; that the formula is working satisfactorily though its application in particular cases may be flexible; that it is not desirable to make additions to the list of prior charges recognised by the formula; that any deduction claimed as a prior charge could only be on the income of the employer; that in cases of machinery working round the clock, the management is entitled to claim a higher depreciation allowance than in cases of ordinary machinery; that as regards allowance on working capital it is not the entire working capital that is entitled to 4 per cent return but only the quantum of reserves used as working capital; that a claim for rehabilitation charges is in respect of a recurring and continuous process of wastage or depreciation of assets and it could not be said that what was granted as rehabilitation charges in one year should set the upper limit for all time; and that the burden of proof in the case of a claim for rehabilitation is on the employer. *India Hume Pipe Co. Ltd.* v. *Palaniswami*[6], points out that there is an essential difference between a period by which wages are paid and the intervals at which the actual payments are made; that it is conceivable that even in the case of an employee whose wage period is

1. (1967) 2 M.L.J. (S.C.) 21.
2. (1967) 1 M.L.J. (S.C.) 67.
3. (1967) 1 M.L.J. 470.
4. (1967) 1 M.L.J. (S.C.) 69.
5. (1967) 1 M.L.J. 120.
6. (1967) 2 M.L.J. 470.

one month and there is a considered determinate wage on that basis, in actual practice, he is receiving the accumulated wage once every quarter as a matter of convenience; and that that view of the implications of section 2 (*aaa*) of the Industrial Disputes Act could be justified by reference to the features inherent in the concept of " average pay". *Express Newspapers Ltd.* v. *Additional Commissioner for Workmen's Compensation*[1], decides that no management can be compelled to retain an employee when his services are not useful to the management and they have a right to retrench his services; that the retrenchment is in discharge of surplus labour for any reason otherwise than as a punishment; that where an employer reorganises his business for reasons of economy or under a *bona fide* scheme of reorganisation introduced in all areas of his business, the fact that its implementation will result in retrenchment of some worker has no bearing on the question whether the reorganisation adopted was *bona fide*. *Management of Lakshmi Coffee Hotel* v. *Workmen*[2], lays down that whether the free food and tiffin supplied to the workers in an establishment is a part of their wages within the meaning of section 2 (*rr*) is a question of fact falling to be determined according to the circumstances of each case; that where an employer pays the full complement of wages to his workers but as a matter of grace or concession supplies them with free food and tiffin during their hours of work it can hardly be said that such supplies will form part of the wages even though they may be capable of being equated in terms of cash; but where the wages are only nominal and such low or nominal wages could be explained only on the basis of the free food and tiffin supplied regularly to the workers which was also reckoned as part of the contract, the value of such food will be wages within the meaning of the section. *Kannan* v. *E. S. I. Corporation*[3], makes it clear that the Employees State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, are valid, that the prohibition in section 9-A of the Industrial Disputes Act against any change in the conditions of service etc., without notice to the employees is not applicable to regulations *re* conditions of service brought into force for the first time in an establishment unless it could be shown that since an employee entered the service the conditions of service are changed by such regulations; that in view of the Notification of 22nd May, 1961, issued by the Central Government under clause (*b*) of the proviso to section 9-A, any change in the conditions of employees of the State Insurance Corporation can be effected after the date of the said Notification without notice to the employees; and that the Employees State Insurance Corporation is not an ' Industrial Establishment ' as defined in section 2 (*e*) (iv) of the Industrial Employment (Standing Orders) Act and hence is not governed by that Act. *Coimbatore Textile Mills Staff Union* v. *State of Madras*[4] holds that in passing an order under section 10 (1) read with section 12 (5) of the Industrial Disputes Act the Government is acting in an administrative capacity and it has the option to make a reference or not to make a reference on the facts taking into consideration the expediency in each case; that even if there is a breach of the Industrial Disputes Act the Government is not bound to interfere; and the Government will be justified in refusing to interfere and make a reference where the dispute is inconsistent with the agreement between the parties. In *Management of Solar Works* v. *Workmen*[5] it is pointed out that where the validity of a dismissal is brought before a Labour Court for adjudication as an industrial dispute on a reference by the Government under section 10 (1) (*e*) the Labour Court is not fettered by the failure of the Labour Officer to give approval to the dismissal, whether it be prior approval under section 33 (1) (*b*) or post approval under section 33 (2), and the Labour Court is bound to take into account the merits of the rival contentions about the alleged misconduct and give a decision whether the misconduct is proved and therefore the punishment is justified. *Coimbatore-Salem Transports Ltd.* v. *Its Workmen*[6] decides that in a reference under section 10-A for arbitration of disputes, it being

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1. (1967) 1 M.L.J. 37.
2. (1967) 1 M.L.J. 32.
3. (1967) 2 M.L.J. 212.
4. (1967) 2 M.L.J. 508.
5. (1967) 2 M.L.J. 378.
6. (1967) 1 M.L.J. 470.

a voluntary one, by the parties of their own accord, the arbitrator has a larger freedom in adjudicating upon the points, and in suitable cases his powers may extend even to the adjudication upon the merits of the punishment awarded and whether it could be mitigated by suitable relief; and the strict rule applicable to cases of reference under section 10 by the Government, that the Labour Court or Tribunal will have no jurisdiction to go into the quantum of punishment when once it is found that the workman engaged was guilty of acts which warrant the proceedings against him, cannot be applied to cases of voluntary reference under section 10-A. *Management of Globe Theatres* v. *Presiding Officer*[1], holds that the principle of 'pooled seniority' must give way when it comes to the question of applying section 25-G in a given case, and the existence or absence of a system of 'pooled seniority' among the workers of the two units of the management will not be conclusive for deciding whether the two establishments were different. *Management of Presidency Talkies* v. *Mohammed Sheriff*[2], states that the terms of settlement relating to re-employment cannot be presumed to operate *de hors* the statutory provisions relating to the re-employment of a retrenched workman, and that section 25-H of the Act and rule 63 of the Rules framed under the Act provide for the conditions and restrictions applicable to such cases. *Management of Solar Works* v. *Workman*[3], expresses the view that the effect of the failure of the management to obtain approval under section 33 will be to give a right to the worker to apply to the Labour Court under section 33-A, and if the worker applies to the Labour Court challenging his dismissal as having been in contravention of section 33 then the Labour Court can go into the merits of the dismissal; and the issue of dismissal itself would be at large and available for decision on the basis of evidence; and the Labour Court can deal with the application as if it was an industrial dispute pending before it. *Madurai Mills Ltd.* v. *Guruvammal*[4], lays down that when a statute creates a special machinery to enforce specially created rights it is the special machinery that should be resorted to and not the ordinary civil Courts, and thus, where it is claimed by certain workmen that they were retrenched from service and hence were entitled to retrenchment benefits under section 25-F, the proper remedy for them would be to approach the Labour Court under section 33-C; and a suit filed in the civil Court for this purpose would be without jurisdiction. *Management of Presidency Talkies* v. *Mohammed Sheriff*[2], points out that section 33-C (2) is wider in scope than section 33-C (1) as it covers both monetary and non-monetary benefits that are capable of being computed in terms of money; that section 33-C (2) takes within its purview cases of workmen who claim that the compensation to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employer; that where a workman claims a right of re-employment although subject to certain conditions and alleges a breach of the terms of settlement, he is entitled to a certain sum of money as compensation due to him for non-fulfilment of the obligation of re-employment without any need to obtain a prior adjudication from the Labour Court by means of an industrial dispute of the right of reemployment; and that section 33-C clearly postualtes that the determination of the question about computing the benefit in terms of money may in some cases have to tbe preceded by an enquiry into the existence of the right, and such enquiry must be held incidental to the main determination of the compensation under the sub-section. *Public Prosecutor* v. *S. A. Jabbar*[5], holds that section 34 (1) provides for two alternatives for making a complaint in respect of offences punishable under the Act, namely, a complaint being made by the appropriate Government itself or a complaint being made under the authority of the Government; that where there is a written order of the Government authorisng the Collector to take proceedings, it is open to the Collector to authorise the Public Prosecutor to file the complaint; that where the terms of the order are wider than a specific direction empowering a particular officer to make the complaint it would certainly cover a case where the officer makes a

1. (1967) 2 M.L.J. 417.
2. (1967) 2 M.L.J. 207.
3. (1967) 2 M.L.J. 378.
4. (1967) 2 M.L.J. 287.
5. (1967) 1 M.L.J. 148.

further delegation ; and the words 'under the authority of the appropriate Government' in the section really imply a sanction by the Government and much emphasis cannot be laid on the identity of the particular officer who has to make the complaint.

COMPANY LAW.

In *C. I. T., Madras* v. *Sri Meenakshi Mills,*[1] the Supreme Court points out that while from the juristic point of view the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members, in certain exceptional cases, however, the Court is entitled to lift the veil of the corporate entity and to pay regard to the economic realities behind the legal facade and that, for example, the Court has power to disregard the corporate entity if it is used for tax evasion or to circumvent tax obligation. *Somasundaram Pillai* v. *Official Liquidator*[2], lays down that rectification of the register has a special significance of its own, that it implies that there is a prior mistake, error or defect which after rectification is made good and corrected by removing such mistake or error ; that the power of the Court to order rectification has to be exercised with great caution ; that once a balance order is passed by the High Court against a contributory the remedy of rectification is not available to him ; that a member cannot stand by and acquiesce in his name remaining in the register and wake up at a late stage, particularly after a winding up order is made ; that he would be guilty of holding out that he is a member ; and that rectification will have to be refused in such circumstances even if a proper case for rectification is made out.

CONTRACTS AND SPECIFIC RELIEF.

In *Board of Revenue* v. *Annamalai & Co.*[3], it is held that where a company borrowed several sums of money from a bank and hypothecated with the bank immovable properties as security for the loan and subsequently the company executed a document described as an irrevocable power of attorney authorising the bank to sell at its discretion immovable properties and credit the sale proceeds therefrom to the account of the company, it will be legitimate to treat the consideration for the grant of the irrevocable power of attorney as traceable to the loan or at least to that part of it which remained undischarged at the time the power of attorney was granted that the hypothecation must be viewed only as a stage in the fulfilment of the promise to repay the loan, and the promise of the company remained executory in character as against the executed promise, namely, the loan advanced by the bank ; and that so long as the reciprocal promise remained executory the company can take successive steps towards discharging the liability thereunder and for each successive step so taken the loan advanced by the bank earlier or such part of it as remained undischarged can operate as consideration ; and the execution of the irrevocable power of attorney constitutes such a step in the discharge of the obligation. *Hajee Abdul Latheef* v. *S. S. Samarasa Sangam*[4], takes the view that where under a contract between the plaintiff and the defendant the plaintiff transports in his lorries certain persons from one place to another, the fact that the lorries plied without a permit in violation of the provisions of the Motor Vehicles Act will not render the contract illegal under section 23 of the Contract Act as to preclude the plaintiff from claiming the hire charges from the defendant ; that to invoke section 23 it must be shown that the agreement is made for illegal purposes or that it is against the public policy ; that the defendant by virtue of the contract is concerned only with the transport of persons and not as to how and in what manner they are transported ; and the illegality in the performance of the contract cannot be equated with a contract made for illegal purposes. *Michael Udayar* v. *Periasami Konar*[5], states that where a person enters into a works contract with the Highways Department for the construction of a road the terms of which prohibited the assignment or sub-letting of the contract, the fact that he enters later on into a partnership with others for the performance

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1. (1967) 1 M.L.J. (S.C.) 76.
2. (1967) 1 M.L.J. 478.
3. (1967) 1 M.L.J. 515 (F.B.).
4. (1967) 1 M.L.J. 449.
5. (1967) 1 M.L.J. 168.

of the contract would not render the partnership illegal as opposed to public policy merely because of the prohibition against assignment or sub-letting. *Tiruvengada Moopanar* v. *Subbiah Moopanar*[1], makes it clear that though as a general rule an agreement in unreasonable restraint of trade is illegal and void as being contrary to public policy, it is also the policy of the law to hold persons bound by their contract; that unless it is shown that the restraint is manifestly injurious to public welfare a contract in reasonable restraint of trade is valid; that if the Court is satisfied that the restraint is reasonably necessary to protect the interests of the contracting parties and was not inimical to the interests of the public it will treat it as valid; that the test is whether the primary object of the parties was in restraint of trade or was one to have a restrictive covenant in a sale; that the reasonableness of the restriction must be judged by the character or nature of the business or its customers; that an agreement by a person not to sell a particular kind of his goods to any one else except the plaintiff, generally or within a specified territory, is valid as an exclusive agency; and that an agreement by a grower of betel vine to sell all the betel leaves grown by him in a particular village only to the plaintiff and to none else is not one in restraint of trade within the prohibition of section 27. *Arunachalam Pillai* v. *Velamma*[2], points out that under section 65 the obligation to restore the advantage received under an agreement, on such agreement being discovered to be void or becoming void, is not confined to the parties to the agreement but extends also to any person that may have received the advantage. In *Gordon Woodroffe & Co.* v. *Shaikh Majid & Co.*[3], the Supreme Court makes it clear that while the essence of a sale of goods is the transfer of title thereto for price paid or to be paid and the transferee in such a case becomes liable to the transferor of goods as a debtor for the price and not as an agent to account for the proceeds of sale, the essence of agency to sell is the delivery of the goods to a person who has to sell them not as his own but as that of the Principal, the owner thereof, and so liable to account for the proceeds of the sale; that where an account contains items both of credit and debit and the figures on both sides are adjusted between the parties and a balance struck, it is a real account stated; that the accounts are settled or stated if they are submitted by the one side and accepted by the other, even if such acceptance is inferrable by conduct as by no objections being raised for a long time thereafter; and such an account cannot be reopened save on the ground of fraud, mistake, or any other equitable ground. In *N. M. Gajiwala* v. *Papammal*[4], the Supreme Court holds that though an agent has no statutory right to sue his principal for accounts, nevertheless, there may be special circumstances rendering it equitable that the principal should account to the agent; and where all the accounts are with the principal and the agent is not possessed of any to enable him to determine for his commission against the principal, or in the exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of the principal are gone into, the suit for accounts by the agent against the principal is maintainable. In *Shivanarayana Kabra* v. *State of Madras*[5], the Supreme Court points out that it is well-established that the *pucca adatia* has no authority to pledge the credit of the up-country constituent to the local merchant and there is no privity of contract between them; the *pucca adatia* is entitled to substitute his own goods towards the contract made for the principal and buy the principal's goods on his own account; and the *pucca adatia* is not the agent of his constituent but is acting as a principal as regards his constituent and not as a disinterested middleman to bring two principals together. *Rangaswami Goundar* v. *Easwaramurthy Goundan*[6], states that what is essential to invest a combination or association with the character of a partnership is that it must be for the purpose of carrying on a business; that for the purpose of the definition in section 4 of the Partnership Act the term 'business' is used in the sense of trade or commerce; that to constitute a business there need not be a series

1. (1967) 1 M.L.J. 117.
2. (1967) 2 M.L.J. 490.
3. (1967) 2 M.L.J. (S.C.) 66.
4. (1967) 2 M.L.J. (S.C.) 32.
5. (1967) 1 M.L.J. (S.C.) 159.
6. (1967) 2 M.L.J. 162.

of transactions of a commercial character; and that when two or more persons join together to purchase immovable properties without anything more it will not be appropriate to regard the transaction as of a commercial character. *Michael Udayar* v. *Periasami Konar*[1], holds that where a partner of a firm purports to enter into a partnership agreement with a third person for and on behalf of his firm he must be deemed to have entered into the partnership only in his individual capacity in the absence of proof to show that he had authority to enter into a partnership on behalf of his firm, and that in the absence of such proof by the parties resisting it; a suit for rendition of accounts brought by him against the partners of the second firm cannot be said to be not maintainable because the partners of his own firm are not made parties to the suit. *S. H. Siamwala* v. *Burma Cycle Trading Co.*[2], expresses the view that where a premises is owned by four individuals who are carrying on business in partnership and they require the premises which was in the occupation of a tenant for carrying on their business, it is in fact a requirement of the partnership business; that if such partnership is not registered it cannot maintain a petition for eviction of the tenant as section 69 (3) imposes a total ban on the institution of any legal proceedings by an unregistered firm; and that the words ' other proceeding ' in section 69 (3) are elastic enough to include a petition under the Madras Buildings (Lease and Rent Control) Act, 1960. *Gopalakrishna Pillai* v. *Venkatesam Pillai*[3], states that where a decree had been obtained by the defendant under section 9 of the Specific Relief Act a suit by the plaintiff in possession without surrendering such possession in pursuance of the decree in favour of the defendant. for a declaration of his title and for injunction for restraining the defendant from executing his decree, would be maintainable; that section 9, by itself, imposes no specific bar to a suit by the defeated party in possession before surrendering possessions and there is nothing in the section to take away the remedies available to the person in possession of the property as of right and entitled to remain in possession, In *Ramaraghava Reddy* v. *Seshu Reddy*[4], the Supreme Court makes it clear that section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and Courts have power to grant such a decree independently of the requirements of the section; that it is well-settled that the worshipper of a Hindu temple is entitled in certain circumstances to bring a suit for a declaration that an alienation of temple properties by a *de jure* shebait is invalid and not binding on the temple; and that worshippers, though not entitled to recover possession of improperly alienated properties, can be granted a declaratory decree that the alienation is not binding on the deity. *Veerappa Mudaliar* v. *Venugopala Mudaliar*[5], declares that a suit for a mere declaration of title without a prayer for possession will be maintainable when the declaration is sought in respect of properties in the possession of cultivating tenants governed by the Madras Cultivating Tenants Protection Act which prevents actual possession being taken, the tenants being entitled to remain in possession under its provisions. *Mac Laboratories* v. *V. R. Nathan*[6], points out that while the issue of a temporary injunction is governed by the provisions of Order 39, Civil Procedure Code, the principles applicable to the issue of a permanent injunction under the Specific Relief Act would normally govern the consideration of the question whether a temporary injunction should issue; that under section 57 of the Act, notwithstanding section 56 (*f*), where a contract comprises an affirmative agreement to do a certain act coupled with a negative agreement express or implied not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement provided that the applicant had not failed to perform the contract so far as it is binding on him; that whatever may be the position in England, so far as India is concerned, the Courts have been prepared to proceed on the basis that a positive

1. (1967) 1 M.L.J. 168.
2. (1967) 1 M.L.J. 294.
3. (1967) 1 M.L.J. 346.
4. (1967) 1 M.L.J. (S.C.) 1.
5. (1967) 1 M.L.J. 96.
6. (1967) 1 M.L.J. 353.

agreement that a person should serve another exclusively would imply a negative agreement not to serve any other person during the period of agreement with the first person which could be specifically enforced under section 57; and that, in this matter, the servant has the same rights as the master so that, a master who has agreed to employ a servant could be prevented by an injunction from employing any other person as his servant. *Boologasundaram Pillai* v. *Appathurai Pillai*[1], expresses the view that though injunctions are but rarely granted to restrain a tenant in common from exercising control over the joint property, a mandatory injunction may be granted where there is malicious and wanton destruction of the common estate by one of them, to prevent its enjoyment and accustomed user by the other tenants-in-common.

PROPERTY LAW.

In *Shanmughavela Mudaliar* v. *Seth Hiranand Narsindas*[2], it is pointed out that the three important requisites of attestation under section 3, Transfer of Property Act are (1) the signatories should be those who have seen the execution or received a personal acknowledgment from the executant of his having executed the document, (*ii*) they should have signed their names in the presence of the executant, and (*iii*) while so doing they should have had the *animus* to attest it; and though a Sub-Registrar like any other individual is entitled to figure as an attesting witness to a mortgage, merely because in the course of registration he is required to affix his signature to the document in token of his satisfaction in regard to certain things contemplated by the provisions of the Registration Act and the Rules made thereunder, he does not *ipso facto* become an attestor to the document. *Ameer Bibi* v. *Chinnammal*[3], holds that inasmuch as even under the *Explanation* I to section 3 registration as such is made notice only to transferees subsequent to the registration, the creation and registration of a simple mortgage deed by a tenant-in-common over the joint property cannot, by itself, be deemed to be a notice to the other tenants-in-common as they are not subsequent transferees. In *Santhanakumar Nadar* v. *The Indian Bank Ltd.*[4]. the Supreme Court states that under section 51 a transferee of immovable property making any improvement therein believing in good faith that he is absolutely entitled thereto has a right to require the person subsequently evicting him therefrom on the strength of a better title to have the value of the improvement estimated and paid or secured to him or to purchase his interest in the property at the then market value thereof. *Periaswami Pillai* v. *Arunajadeswaraswami Temple*[5], decides that under section 51 a lessee would not be entitled to compensation in respect of any improvements effected on the property demised, and that if a lessee effects improvements not in a mistaken belief in regard to the land but in assertion of rights which he correctly believes to be his but which ultimately turn to be unfounded in law, he cannot claim compensation *Ramalinga Padayachi* v. *Natesa Padayachi*[6], expresses the view that the implied contract under section 55 (2) by the seller with the buyer, that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same, is applicable only to cases where there is a representation which the buyer accepted though he might have been aware of the defects hoping that the defects would not affect him; but, when the buyer himself knew full well that the seller had no title and was entering into the transaction with full knowledge of want of title the implied warranty could not be invoked. In *Baluswami* v. *Pattay Gounder*[7], the Supreme Court makes it clear that section 58 (*c*) postulates the creation by the transfer, of the relationship of mortgagor and mortgagee, the price being charged on the property conveyed ; whereas, in a sale with a covenant for retransfer there is no relationship of a debtor and creditor, nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer it within the period specified ; that the distinction between the two is the existence or otherwise of the relationship of

1. (1967) 1 M.L.J. 154.
2. (1967) 2 M.L.J. 388.
3. (1967) 1 M.L.J. 461.
4. (1967) 2 M.L.J. (S.C.) 62.
5. (1967) 1 M.L.J. 93.
6. (1967) 2 M.L.J. 166.
7. (1967) 2 M.L.J. (S.C.) 8.

debtor and creditor and the transfer being a security for the debt; that a document of ostensible sale to be deemed a mortgage as defined in section 58 (*c*) must embody any of the conditions specified therein in the document itself; and that even when so incorporated in the deed the question whether it can be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of surrounding circumstances. In *Santhanakumar* v. *Indian Bank Ltd.*[1], the Supreme Court makes it clear that section 69 lays down in no uncertain terms that the requisite notice may be given to the mortgagor or one of several mortgagors where there are a number of them, the obvious idea being that the mortgagor who is given the notice is constituted the agent of the other mortgagors to receive the same; that though it may be hard on a person in the position of a mortgagor to get no notice under the section, if he cames to know that the property has been sold still, if there has been no fraud or collusion in the matter, he has no cause for complaint, and consequently, a sale of the mortgaged property under section 69 without notice to a person who had purchased a portion of the mortgaged property from the mortgagor would not be invalid when such notice had been served on the vendors. *Ramiah Moopanar* v. *Chelliah Nadar*[2], holds that the liability for rateable contribution, of the alienees of properties mortgaged in the first instance and sold subsequently to different persons, could be rested only under section 89; and, in the absence of a contract between the contributories themselves, it is not open to the Court on any equitable grounds to rateably distribute the obligation for the mortgage debt amongst the parties without reference to section 89. *Shanmugam Nadar* v. *Sivan Pillai*[3], lays down that the puisne mortgagee's right to redeem the prior mortgage under section 91 cannot be taken away by his not being made a party in the prior mortgagee's suit, nor is the right of the purchaser without notice (in execution of the prior mortgagee's decree) enhanced; and though in law the purchaser in the prior mortgagee's sale, as an assignee of the mortgagor, is entitled to redeem, his right of redemption in law or equity cannot prevail over the puisne mortgagee's right to redeem. *Lakshmichand Mehta* v. *Rajagopal Naidu*[4], decides that the provisions of section 106 (*f*) relating to termination of tenancy by notice to quit, in its application to tenancies governed by the Madras City Tenants Protection Act shall, to the extent necessary to give effect to the provisions of the latter Act, be deemed to have been repealed or modified; but where a landlord does not seek to evict the tenant but only claims damages for use and occupation on the basis of the termination of the tenancy in accordance with the provisions of the Transfer of Property Act there is no law barring him from claiming such damages, and to such cases the notice required by section 11 of the Madras City Tenants Protection Act is not necessary. *Periasami* v. *Arunajadeswaraswami Temple*[5], states that where a document of lease which requires to be registered under section 107 is not registered, section 106 would be attracted and statutorily the lease would be deemed to be a lease from month to month terminable on the part of either the lessee or the lessor by fifteen days' notice, and in such a case, the fact that the written lease provides that the rent is payable at definite intervals or that the terms of the lease were such that it is impossible to regard it as a monthly lease is wholly irrelevant.

Land Tenures and Tenancy Legislation.

In *Roman Catholic Mission* v. *State of Madras*[6], the Supreme Court points out than inams are of various kinds classified on the basis of concession in land revenue either by remission of the whole revenue or part thereof or being held subject to the payment of a quit rent—known as sarva inam, sarva manyam, sarva dumbala or darobust inam where the entire land revenue is remitted; as ardha manyam, chatru bhagam etc. according to the share which was freed, the right to the soil not being included in the grant—that, in the third kind of inam, the quit rent is known as poruppu; that sthala manyam means land held at a low quit rent, granted for performance of service of the temple and not by way of personal inam to the grantee;

1. (1967) 2 M.L.J. (S.C.) 62.
2. (1967) 1 M.L.J. 305.
3. (1967) 2 M.L.J. 233.
4. (1967) 1 M.L.J. 20.
5. (1967) 1 M.L.J. 93.
6. (1967) 1 M.L.J. (S.C.) 119.

that the theory that contracts between the Secretary of State for India and the inam holders came into existence by the passing of 32 and 33 Vic. c. 29 by the British Parliament, and that thereafter the inams could be resumed only by the Crown, and that, inasmuch as section 44-B of the Madras Act II of 1927 conflicted with the position and enabled the revenue officer to order resumption, it was void, was fallacious; that 32 & 33 Vic. c. 29 did not create any contract but only validated the defective title deeds for the inams granted by the Inam Commissioner; and there is no period of limitation prescribed by any law within which alone Government should exercise its prerogative of imposing assessment on land liable to be assessed with public revenue. *Subbachariar* v. *State of Madras*[1], holds that, in order to constitute a grant an inam, the mere use of the expression inam or gift is wholly inconclusive unless alongside of it there is indication that the grantee was to enjoy the land either totally free of rent or to have partial remission of the Government's share of a the revenue; that *prima facie* it may be said that where the inam grant is only for the assessment, whether whole or partial, if full assessment is levied the inam gets extinguished; and that if with reference to any particular gift, as a result of the assessment under the Madras Inams (Assessment) Act XI of 1956, there is nothing of the gift, benefit or favour left, there will be no inam for the Madras Acts XXVI and XXX of 1963 to act upon. *Bhaskaran* v. *State of Madras*[2], decides that where the grant is an assignment for consideration paid by the grantees, though called an inam, and has been regarded as an inam at the time of the Inam Enquiry, it cannot be held to be an inam; that confirmation of the original assignment on change of sovereignty is an implied acceptance and recognition of the tenure under which the property was held; and the concept of an inam grant that it must be a gift or benefaction cannot be reconciled with an assignment which has its origin in bilateral transactions. In *A. Kondayya* v. *S. Rama Rao*[3], the Supreme Court makes it clear, that the presumption under *Explanation I* to section 3 (2) (*d*) of the Estates Land Act arises only when it is proved that grant as an inam is expressed to be of a named village; and that the area which forms the subject-matter of the grant shall be deemed to be an estate even if it appears that in the grant are not included certain lands in the village, which have, before the grant of the named village, been granted on service or other tenure or have been reserved for communal purposes; that the *non obstante* clause in the *Explanation* does not prescribe the condition for the raising of the presumption; that the burden of proving that the grant is expressed to be of a named village lies upon the party who claims to bring the grant within the exception; but once it is so proved the presumption under the Explanation arises which, however, is not a conclusive presumption but a presumption of law that is rebuttable. In *G. Ramamurthy* v. *State of Andhra Pradesh*[4], the Supreme Court holds that for purposes of section 3 (*b*) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, if the land in dispute had been included in the assets of the Zamindari at the time of the Permanent Settlement it would be a part of the zamindari estate and that where the grant of land was subject to performance of personal service to the zamindar or subject to payment of favourable rents and also performance of such personal service there is no such presumption. *Sri Chidambara Vinayagar Devasthanam* v. *Duraisamy*[5], states that, generally speaking, where land is taken on lease for building purposes and the lessee puts up a superstructure, the person putting up the superstructure is spoken of as the owner of the building and not the owner of the land; that under section 18 (4) of the Estates Abolition Act, a landholder who might have leased a site for building purposes cannot claim the superstructure built by the tenant as vesting in him as part of the site or claim the site as part of the building; that section 18 (5) does not confer any special right on the landholder even when he is not the owner of the superstructure; that it is only for purposes of vesting that provision is made under section 18 that the building is to include the site on which it stands; that *eo instanti* with the notification of the estate under the Act, the landholder loses all interest in the estate except what the Act gives him; and

1. (1967) 1 M.L.J. 206.
2. (1967) 2 M.L.J. 406.
3. (1967) 1 M.L.J. (S.C.) 97.
4. (1967) 2 M.L.J. (S.C.) 75.
5. (1967) 2 M.L.J. 181.

that his interest in the site having vested in the Government he cannot claim any rent for the site from the tenant. *Santhanakrishna Mudaliar* v. *Board of Revenue*,[1] states that in regard to the taking over and paying compensation to the landholder of an inam estate the method of fixing the annual ryotwari demand forms the main ingredient of the basic annual sum; that under the *Explanation* added to section 32 by the amendment in 1956 the appropriate assessment will be the wet assessment if the land was cultivated with wet crops in normal years with water taken from a former irrigation work and which became liable to pay water cess to Government after facilities for irrigation from a Government irrigation work became available; and that as the landholder is the only person who will be interested in the proper determination of the appropriate assessment because such assessment has relevance for determining the compensation payable to him notice should be given to him to enable him to make his representation. *Varadaraja Mudaliar* v. *Kannammal*[2], expresses the view that where with reference to an estate notified and taken over by the Government, the rival parties to a petition filed before the Estates Abolition Tribunal claiming the compensation amont agreed to have the matter settled by a civil Court, and accordingly one of them filed a suit before the civil Court it was not open to the other party in view of their agreement to question the jurisdiction of the civil Court to entertain it. *Sangiliveerappa* v. *Kannuthayi*[3], states that the Estates Abolition Act does not deal with the distribution of the share of compensation amount of the sharer who dies after the notified date; that under section 45 the share of the compensation amount would be apportioned as if there had been a partition between the principal landholder and his sons; that the rights of the creditors over the share of the compensation amount of the principal landholder cannot become extinct on the death of the landholder and can be enforced against his share in the hands of his heirs; that section 59 neither detracts from nor adds to the rights of the creditors, secured or unsecured, declared under sections 42 to 45; that section 59 (1) (*a*) refers only to the quantum of liability determinable under section 46, and the extent of the liability of the individual sharers; and that it cannot have the effect of making unenforceable claims which though not binding on the estate are still provided for under section 46. *Sethu Konar* v. *Duraisami*[4], states that proof of the jural relationship of landlord and tenant is essential so as to vest jurisdiction in a Revenue Court to deal with a petition under the Madras Cultivating Tenants Protection Act, that if such jurisdictional fact did not exist the Revenue Court necessarily will have no jurisdiction to entertain the application; that a mere collaborator or a person who renders assistance to a cultivating tenant as defined in section 2 will not, by himself, by reason of such collaboration or assistance, become a cultivating tenant; and that the party who alleges that he is a cultivating tenant should prove it by acceptable evidence. *Chelliah* v. *Nagarathinam Ammal*[5], points out that where a cultivating tenant permits the adjoining cultivator to encroach upon the land under his cultivation and the encroachment is discovered by means of a survey, the tenant cannot necessarily be held guilty of negligence which is destructive or injurious to the land; that it may well be that the tenant was really unaware that his holding was being encroached upon; that it will be equally grotesque to hold that such a case will fall under section 3 (2) (*d*); and that it cannot be held that the tenant is guilty of denial of the landlady's title by implication. *R. B. Mani* v. *Palanimuthu Pillai*[6], points out that where a tenant has availed himself of the remedy under section 3 (3) and has defaulted to deposit the rent within the time granted to him by the Court in the proceedings under that sub-section, he cannot, thereafter, have any further extension of time for payment of arrears in an application for his eviction filed by the landholder under sub-section (4); but where a tenant's application under sub-section (3) for directions to deposit the cash equivalent of rent is dismissed as not maintainable since the deposit was made beyond one month after it became due

1. (1967) 2 M.L.J. 538.
2. (1967) 2 M.L.J. 57.
3. (1967) 2 M.L.J. 169.
4. (1967) 2 M.L.J. 473.
5. (1967) 2 M.L.J. 402.
6. (1967) 2 M.L.J. 226.

it cannot be said that the tenant had availed himself of the provisions of sub-section (3); and that, in such a case, in an application under sub-section (4) by the landlord for the eviction of the tenant on the ground of default, it is open to the Revenue Divisional Officer to grant extension of time to pay the arrears. *Raso Moopanar* v. *Ramamurthy Iyer*[1], takes the view that though the Revenue Courts under the Act are not civil Courts and cannot normally have any inherent powers, still, even such tribunals have certain powers by implication where they are necessary for the effectual and proper performance of the work entrusted to them by statute; that the Cultivating Tenants Protection Act being a piece of beneficial legislation intended to protect cultivating tenants from eviction, a tenant who has been evicted from his holding in pursuance of an order of Court which has been subsequently set aside, cannot be without a remedy to get back possession; and that the Revenue Court will have the power to restore possession to such tenant though it has neither inherent power to grant restitution nor power in that behalf granted by statute. *Palaniswamy Gurukhal* v. *Kandappa Goundar*[2], decides that the Revenue Court has jurisdiction in an application by the landlord for eviction of a cultivating tenant on the ground of default in payment of rent 'to direct the tenant under section 3 (4) (*b*) to deposit in order to avoid being evicted the entire arrears of rent, irrespective of the fact that it may be time barred and cannot be recovered in a suit for arrears of rent in a civil Court; that the exercise of judicial discretion under section 3 (4) (*b*) is only as regards allowing the cultivating tenant a reasonable time to make the deposit and not as regards the extent or quantum of arrears; and a tenant who has defaulted to pay rent for a long time is not entitled to ask the Revenue Court to exercise its discretion of not evicting him from the holding on the landlord's application, but if the Court thought fit to exercise its discretion in his favour even in such a case it should ask him to pay the entire arrears of rent. *Mahalakshmi Ammal* v. *Swaminatha Iyer*[3] holds that the effect of section 6-A is that in any suit for possession or for an injunction in relation to a land, if it is established that the defendant is a cultivating tenant the suit shall be transferred to the Revenue Divisional Officer; the section covers also suits to be filed for possession or injunction in relation to a land after the Act came into force and is not restricted to pending suits only; the Act does not bar the filing of a suit for possession or injunction in relation to a land in a civil Court if it does not fall within the provision of section 3 (4); if it transpires in the civil suit that the defendant is a cultivating tenant the Court should transfer the matter to a Revenue Court; and before a civil Court could so transfer it has to be satisfied (*i*) that the defendant is a cultivating tenant, (*ii*) that he is entitled to the benefits of the Act, and (*iii*) that on transfer the defendant would be in a position to obtain one or other of the statutory reliefs provided for under the Act. *Krishna Kambar* v. *Muthiah Thevar*[4], holds that where an application for eviction of a tenant was rejecteb by the Revenue Court summarily on the ground that the relationship of landlord and tenant was not made out, and thereupon, a suit was filed by the landlord for a declaration of his title, and the civil Court transferred the case to the Revenue Court holding that the defendant was a cultivating tenant; the revenue Court cannot dismiss the petition as barred by *res judicata*; and the failure of the landlord to go up in revision to the High Court on the earlier decision of the Revenue Divisional Officer in the summary proceedings as to the title cannot confer on that decision a finality so as to bar the Officer from deciding the case transferred to him by the civil Court after an express finding as to title.

INCOME-TAX LAW.

In *Ramanathan Chettiar* v. *C.I.T.*[5], the Supreme Court makes it clear that the word 'casual' must be construed in its plain and ordinary sense as signifying 'subject to or produced by chance, accidental, fortuitous, coming at uncertain times, not to be calculated on unsettled;' that a receipt of interest which is foreseen and antici-

1. (1967) 1 M.L.J. 287.
2. (1967) 2 M.L.J. 438.
3. (1967) 2 M.L.J. 158.
4. (1967) 2 M.L.J. 237.
5. (1967) 1 M.L.J. (S.C.) 149.

pated cannot be regarded as casual even if it is not likely to recur again; that though the receipt of a lump payment on account of interest is not a receipt of a recurring nature, yet, where the interest was granted under a decree of the Court from the date of the institution of proceedings in the lower Court and was calculated upon the footing that it accrued *de die in diem* it has the essential quality of recurrence which is sufficient to bring it within the scope of the Income-tax Act; and the interest paid to the assessee on the amount of estate duty directed to be refunded is income liable to be taxed under the Act. In *East India Industries Ltd.* v. *C.I.T.*[1], the Supreme Court expresses the view that if the particular object of the trust is neither charitable nor religious in character and the trust deed gives an absolute power of selection to the trustee to choose between charitable and non-charitable objects of the trust for spending the entire income of the trust properties the trust would not be one held wholly for religious or charitable objects within the meaning of section 4 (3) (*i*) of the Act. In *Sri Meenakshi Mills* v. *C.I.T.*[2], the Supreme Court holds that the primary motive in incurring the expenditure admissible to deduction under section 10 (2) (*xv*) need not be directly to earn income thereby; that persistence of the assessee in launching a civil proceeding and carrying it from Court to Court and incurring expenditure for that purpose or the failure of such proceeding cannot be regarded as a ground for disallowing the claim for deduction; and the expenditure incurred to resist in a civil proceeding the enforcement of a measure legislative or executive which imposes a restriction on the carrying on of a business or to obtain a declaration that the measure is invalid would if other conditions are satisfied be admissible under section 10 (2) (*xv*) as a permissible deduction in the computation of the taxable income. In *East India Industries Ltd.* v. *C.I.T., Madras*[3] the Supreme Court decides that where a trustee has an absolute power to choose between charitable and non-charitable objects of the trust no exemption can be granted in respect of a donation made to the trust by an assessee under section 15-B. In *Srinivasan* v. *C.I.T., Madras*[4], the Supreme Court lays down that interest earned on a deposit or loan differs from interest earned on amounts of which minors were permitted the use by the firm, as they were accumulated profits arising from the firm itself and as persons admitted to the benefits of the partnership, and that such interest at least indirectly arose and accrued to the minors because of their capacity mentioned in section 16 (3) (*a*) (i) and (ii), and was therefore includible in the assessment of their father. In *Commissioner of Income-tax* v. *Prithivi Insurance Co., Ltd.*[5], the Supreme Court points out that whether two or more lines of a business may be regarded as the same business or as different businesses depends not upon the special methods prescribed by the Income-tax Act for the computation of the taxable income but upon the nature of the businesses, the nature of their co-organisation, management, source of the capital fund utilised, methods of book-keeping and a host of other related circumstances which stamp them as same or distinct; that the test is if there is any inter-connection and interlacing, any interdependence and any unity at all embracing the two businesses evidenced by the existence of common management, common administration, common fund and a common place of business; that the test whether one of the businesses can be closed without affecting the conduct of the other business is not a decisive test for determining whether the two businesses constitute the same business within the scope of section 24 (2); and that if one of the businesses cannot be conveniently carried on after the closure of the other that would be a strong indication that the two businesses constitute the same business. *O. RM. M. SP. SV. Firm* v. *C.I.T.*[6], makes it clear that tax is charged under the Income-tax Acts on specific units such as individuals, Hindu undivided families, companies, local authorities, firms, associations of persons etc., and business, profession, or vocation is not a unit of assessment; that when therefore section 25 (3) enacts that if tax was charged at any time on any business it is intended that the tax was charged on the owner of the business; that if that

1. (1967) 2 M.L.J. (S.C.) 87.
2. (1967) 1 M.L.J. (S.C.) 36.
3. (1967) 2 M.L.J. (S.C.) 87.
4. (1967) 1 M.L.J. (S.C.) 45.
5. (1967) 1 M.L.J. (S.C.) 57.
6. (1967) 1 M.L.J. (S.C.) 49.

condition be fulfilled in respect of the income of any business under the 1918 Act, the owner or his successor-in-interest in relation to the business will be entitled to get the benefit of the exemption under it if the business is discontinued; and the exemption under section 25 (3) being general there is no reason to restrict the condition of its applicability only to income on which the tax was payable under the head "profits, gains of business, profession or vocation." In *C.I.T., Madras* v. *Mahalakshmi Textile Mills Ltd.*,[1] the Supreme Court states that there is nothing in section 33 (4) which restricts the Tribunal to the determination of questions raised before the departmental authorities; that all questions whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal; that if for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal to grant that relief; and that in fact, it would be under a duty to grant that relief. In *Commissioner of Income-tax* v. *Adinarayanamurty*[2], the Supreme Court points out that under the scheme of the Income-tax Act, the "individual" and the 'Hindu undivided family' are treated as separate units of assessment and if a notice under section 34 of the Act is wrongly issued to the assessee in the status of an 'individual' and not in the correct status of 'Hindu undivided family' the notice is illegal and all proceedings taken under that notice are *ultra vires.* In *K. V. Narayana & Sons.* v. *First Additional Income-tax Officer*[3], the Supreme Court lays down that it is not necessary or imperative that a notice under section 34 must specify under which of the two clauses, clause (*a*) or clause (*b*) of section 34 (1) the notice is issued; that the main notice to be issued in a case under section 34 is the notice under section 22 (2), and section 34 merely authorises the issue of such a notice; that it is clearly implicit in the terms of sections 23 and 34 that the assessee is under a duty to disclose fully and truly material facts necessary for the assessment of the year, and the duty is not discharged merely by the production of the books of accounts or other evidence; that it is the duty of the assessee to bring to the notice of the Income-tax Officer particular items in the books of account or portions of documents which are relevant; and that even if it be assumed that from the books of account produced, the Income-tax Officer, if he had been circumspect, could have found out the truth, the Income-tax Officer may not on that account be precluded from exercising the power to assess income which had escaped assessment. In *Commissioner of Income-tax* v. *Sri Meenakshi Mills*[4], the Supreme Court points out that the requirements of section 42 (1) are that (*a*) any money should have been lent at interest outside the taxable territory, (*b*) income, profits or gains should accrue or arise directly or indirectly from such money so lent at interest and (*c*) the money should be brought into the taxable territory in cash or kind; that if all these conditions are satisfied the interest will be deemed to be income accruing or arising within the taxable territories; and the knowledge of the lender and the borrower that the money is to be taken into India must be an integral part of the transaction. In *I. T. O., Madras* v. *Budha Pictures*[5], the Supreme Court states that a person to whom a notice under section 46 (5-A) has been issued has only to object that the sum demanded or part thereof is not due to the assessee or that he does not hold any money on account of the assessee and he has not to say that he is not likely to owe or to hold money; that the expressions 'may become due' or 'may subsequently hold money' suggest in the context a subsisting relationship between the person served with the notice and the assessee such as the assessee's employer or banker or debtor, or a person paying annuity to him; and that they do not suggest a bank with which he has never dealt, a person he has never lent money to or dealt with, or persons who may possibly in the future employ an assessee out of job or work. In *East India Industries* v. *C.I.T., Madras*[6], the Supreme Court points out that under section 66 (1) even where a question of law was not raised before the Tribunal but the Tribunal deals with it, it must be deemed to be one arising out of its order.

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1. (1967) 2 M.L.J. (S.C.) 92.
2. (1967) 2 M.L.J. (S.C.) 84.
3. (1967) 1 M.L.J. (S.C.) 41.
4. (1967) 1 M.L.J. (S.C.) 76.
5. (1967) 2 M.L.J. (S.C.) 81.
6. (1967) 2 M.L.J. (S.C.) 87.

Hindu Law.

In *Seethalakshmi Ammal* v. *Ponnuswamy Nadar*[1], it is held that Hindu law would apply to converts to Hinduism; that though it is not essential to prove a formal conversion to Hinduism the Court would have regard to factors like long residence in India, abdication of the original religion by some clear act of renunciation, assuming a Hindu name, marrying a Hindu according to Hindu rites, taking to the Hindu mode of life, and above all the sense of the community into which the convert is alleged to have been received, to presume that he is a Hindu. *Sami Naidu* v. *Pandaridas Reddiar*[2], expresses the view that where a Court guardian applies to the Court for permission to contract the marriage of a minor with the proposed spouse and permission is refused on the ground of the ward's tender age, still, if the marriage is actually celebrated in violation of the Court's order, the marriage will not be invalidated. *Thirumal Naidu* v. *Rajammal*[3], states that in a proceeding under section 9 of the Hindu Marriage Act, by the wife for restitution of conjugal rights against the husband any agreement between the spouses to live separate would be no bar to the suit. *Rathnam* v. *Thangasami Pillai*[4], lays down that under Hindu Law if a member of a joint family, be he the father or the managing member, carries on any business the presumption is that it is his own business; and when any member claims the business as joint family business the burden is upon him to establish it; and the plaintiff can not build any argument in his favour relying upon the acts of bounty to the disadvantage of the maker thereof. In *Ammathayi* v. *Kumaresan*[5], the Supreme Court points out that so far as movable ancestral property is concerned a gift of affection may be made to a wife, to a daughter, and even to a son provided the gift is within reasonable limits; that as regards ancestral immovable property a father or any other managing member can make a gift within reasonable limits for pious purposes, *i.e.*, charitable and/or religious purposes; that making a gift within reasonable limits of ancestral immovable property to a daughter in fulfilment of an ante-nuptial promise made at the time of settlement of the terms of the marriage is permissible; that the right to make such a gift is not confined now to the marriage occasion alone but can be made at any time; but a gift by a husband to his wife of ancestral immovable property out of love and affection would be invalid, even if in doing so, he was merely carrying out the wishes of his father, inasmuch as the latter himself could not make such a gift, at the time of the marriage of his daughter-in-law. *Devadas* v. *Ponnammal*[6], makes it clear that a non-consenting member of a coparcenary gets a right to attack an alienation the moment it is made; that the right continues till the expiry of the period of limitation; that the right could also be exercised by a son born after the alienation; but it is not his individual or separate right, so that when once the cause of action has arisen time begins to run; that if on the date of the impugned alienation there were two minor sons, at the best, the period of limitation for attacking the sale will extend up to 3 years after the attainment of the majority of the younger son; and the right to attack the alienation in those circumstances is available to an after-born son and can be exercised up to the date when the period of limitation so indicated expires. *Ranganathan Chettiar* v. *Annamalai Mudaliar*[7], points out that for the proviso to section 6 of the Hindu Succession Act to apply by reason of the existence of a male relative claiming through a female relative it is not a requirement that such female relative should have survived the deceased coparcener, and reading section 6 along with the other provisions of the Act, it is clear that, where a father in a Mitakshara joint family dies intestate leaving surviving him his son and the son of a predeceased daughter, the proviso to section 6 would be attracted and both of them would succeed to his interest in the coparcenary property simultaneously as class I heirs and tenants-in-common. *Gurunatham Chetty* v. *Navaneethamma*[8], holds that the object of section 14 (1) is not to put a Hindu female in a better position than a

1. (1967) 2 M.L.J. 334.
2. (1967) 1 M.L.J. 318.
3. (1967) 2 M.L.J. 484.
4. (1967) 1 M.L.J. 360.
5. (1967) 1 M.L.J. (S.C.) 164.
6. (1967) 1 M.L.J. 171.
7. (1967) 1 M.L.J. 389.
8. (1967) 1 M.L.J. 455.

Hindu male; that the section is not intended to override lawful terms restricting the rights of a Hindu female in contracts, bargains, bequests or gifts, that if an instrument, be it a decree or award or deed of partition merely declares a preexisting title of a Hindu female to any particular property the case will be governed by section 14 (1) and not by section 14 (2); that a right to maintenance, even if charged over a specified property, does not by itself amount to a transfer of property ; but where property is transferred in discharge of the obligation to maintain her out of the family estate and she is given only a limited interest in it section 14 (2) will be attracted, but if no such limitation has been attached as to the estate taken in the property section 14 (1) will apply. In *A. Veerraju* v. *P. Venkanna*[1], the Supreme Court points out that the manager of a Hindu temple or Hindu deity has no authority to grant a permanent lease of agricultural land belonging to the temple or deity without legal necessity, and in case he does so, the lease will enure for the term of his office only; but he has ample power in the course of his management to grant a lease from year to year and such a lease would not terminate with the expiry of the term of office of such manager or the succeeding managers but will continue of its own force until duly terminated by a succeeding manager. *Alagumalai Thevar* v. *Raju*[2], lays down that where the corporate body of the lawful trustees of a religious institution is not functioning and one of the members of that body alone is in management, his management can only be as a *de facto* trustee; and such a person *bona fide* and in good faith in management can sue on behalf of the institution for recovery of the property held adversely to the trust by strangers without impleading the other recalcitrant trustees.

Law of Evidence

In *Collector of Customs* v. *Bhirumal Pahaljani*[3], it is made clear that to bring a statement recorded by an officer during an enquiry within the prohibition of Article 20 (3) of the Constitution the person concerned whose statement has been recorded must have stood in the character of an accused at the time he made the statement, and it will not suffice that he may become an accused any time after the statement was made; hence the bar will not apply to statements recorded from a person during an investigation by a Customs Official under sections 107 and 108 of the Customs Act at a time when the deponent did not stand in the position of an accused. In *Roman Catholic Mission* v. *State of Madras*[4], the Supreme Court holds that copies of original documents would not be admissible in evidence when the originals were not produced at any time nor any foundation laid for the establishment of any right to give secondary evidence. In *N. M. Gajiwala* v. *Papammal*[5], the Supreme Court lays down that where in a suit on a promissory note a collateral oral agreement that the obligation under the note was not to be enforced for 5 years and even then it was to be enforced only in respect of the liability for any balance due after adjusting the commission payable to the defendant by the plaintiff was pleaded in defence, such collateral oral agreement constituted a condition precedent to the attaching of obligation under the note and fell within the third proviso to section 92 of the Evidence Act. In *Krishna Pillai* v. *Meenakshi Ayal*[6], the Supreme Court points out that where the attesting witness examined at the trial did not depose that he saw the other attestor (not called as a witness) sign the deed (a will) the will could not be held to be proved and the question of its genuineness need not be gone into. In *Ammathayi* v. *Sundaresan*,[7] the Supreme Court states that section 112 raises *inter alia* a conclusive presumption that a child born during the continuance of a valid marriage between his mother and any man is the legitimate son of that man, and that conclusive presumption can only be rebutted if it is shown that the parties to the marriage had no access to each other at any time when he could have been begotten. *Kandasami Pillai* v. *Thiagaraja Pattar*[8], lays down that section 114 is a

1. (1967) 1 M.L.J. (S.C.) 4.
2. (1967) 1 M.L.J. 301.
3. (1967) 1 M.L.J. 408 (F.B.).
4. (1967) 1 M.L.J. (S.C.) 119.
5. (1967) 2 M.L.J. (S.C.) 32.
6. (1967) 1 M.L.J. (S.C.) 89.
7. (1967) 1 M.L.J. (S.C.) 164 ; *see also* (1967) 2 M.L.J. 334.
8. (1967) 2 M.L.J. 475.

rule of guidance and the presumption thereunder being only permissive it is not absolutely obligatory on the part of the Court to draw such a presumption in every case: that the Court has an option in the matter of drawing any presumption having regard to the other circumstances in the case; and where a suit transaction was proved to the satisfaction of the Court by acceptable evidence of bill books or vouchers, the mere non-production of account books relating to the transaction cannot compel the Court to draw any adverse inference against the party failing to produce the account books. *Ponnuswamy Reddiar* v. *Vasantha*[1], expresses the view that where the defendant and a woman had been living in illicit intimacy from about 10 days after she left her lawfully married husband, and a child was born to her within 7 months therefrom, and the delivery of the child was not premature, section 114 can be relied upon and in the absence of a finding that the defendant was keeping the woman as his concubine at the relevant period prior to the woman's shortlived marriage, which itself had endured just for 10 days, the defendant cannot be assumed to be the father of the child. *A. Veerraju* v. *P. Venkanna*[2], lays down that having regard to section 116 possession by a tenant of the demised property during the continuance of a lease from year to year even beyond the life-time of the manager of a temple or a deity granting the lease cannot be adverse to the temple.

LAW OF LIMITATION.

In *Roman Catholic Mission* v. *State of Madras*[3] the Supreme Court points out there is no period of limitation prescribed by any law within which alone the Government should exercise its prerogative of imposing assessment on land liable to be assessed with public revenue. *Sulaiman Rowther* v. *Mohamed Ebrahim*[4], lays down that the provision for exclusion of time during which the defendant had been outside India is mandatory: that section 13 of the Limitation Act does not require that it must be one continuous period; and there is no scope for the interpretation that if the defendant had at intervals been within India the plaintiff cannot get the benefit of section 13. *Ramachandra Iyer* v. *Annamalai Chettiar*[5], states that to the extent exclusion is allowed under section 13 there is in effect a *pro tanto* extension of the period of limitation unlike under section 4, and that on account of such exclusion, during the resulting period of limitation, there can well be an acknowledgment under section 19. *Venkatachari* v. *Arunachalam*[6], takes the view that where the individual claims of all the four plaintiffs in a suit were set out in an earlier suit and separate reliefs based thereon were also prayed for and the Court ordered that one of them should elect to continue the suit and on such election struck off the other plaintiffs from the record the requirements of section 14 are satisfied and the benefit of exclusion of time under the section is available to the other three who filed separate suits later on their claims and prayed for reliefs (same as in the prior suit). *Janab Haji Abdul Hamid* v. *Samsunnissa Begum*[7], makes it clear that an alienation by a legal guardian beyond his powers, *i.e.*, an unauthorised alienation by an authorised person, is a voidable and not a void transaction and the limitation to set aside such a transfer is that prescribed by Article 44: that the article will apply whether the ward be a Hindu or Muslim: and that it will not make any difference to the applicability of the article merely because of the frame of the suit as one for partition and separate possession if in effect the quondam minor is seeking to have the transfer set aside. *Gopal Chettiar* v. *Shanmuga Nadar & Bros.*[8], states that though it is a question of fact in each case whether an account is open, mutual and current, for the purpose of such an account it must fulfil the requirement of reciprocal demands involving transactions on each side creating independent obligations on the other and not merely transactions which create obligations on one side alone those on the other

1. (1967) 1 M.L.J. 102.
2. (1967) 1 M.L.J. (S.C.) 4.
3. (1967) 1 M.L.J. (S.C.) 119.
4. (1967) 2 M.L.J. 483.
5. (1967) 1 M.L.J. 437.
6. (1967) 2 M.L.J. 265.
7. (1967) 2 M.L.J. 195.
8. (1967) 1 M.L.J. 163.

being merely complete or partial discharges of such obligations. *Sri Rathnapureeswaraswami Temple* v. *Nagarathnam*[1], points out that in the case of an agricultural tenancy the starting point for the commencement of limitation in a suit for arrears of rent is the point at which the rent becomes due, that normally the rent becomes due at the close of the period in respect of which it has to be paid, and if a party pleads that the rent became due at an earlier point of time it is for him to establish his case. In *Srinivasa Reddiar* v. *Ramaswami Reddiar*[2], the Supreme Court makes it clear that Article 134-B applies to all cases where it is shown that (*i*) the immovable property concerned was comprised in the endowment, (*ii*) it was transferred by the previous manager, and (*iii*) it was for a valuable consideration; and that the nature of the representations made by the previous manager in regard to his relation with the properties is irrelevant. In *A. Veerraju* v. *P. Venkanna*[3], the Supreme Court points out that the transfer contemplated by Article 134-B is an illegal or unauthorised transfer made by a previous manager; that the article does not apply to a suit for the recovery of property where the property has been lawfully transferred by a previous manager and the transfer remains effective after his death, resignation or removal; and that where a lease of lands belonging to a temple granted by its manager is lawful and binding on the temple even beyond his lifetime, a suit for the recovery of the lands by a succeeding manager after duly terminating the lease by a notice would be governed by Article 139. In *S. Y. Yar Khan* v. *S. M. Yar Khan*[4], the Supreme Court decides that a suit by the Board of Wakfs for recovery of wakf property is not a suit by or on behalf of the State to which Article 149 will apply since the Board is not an agent of the State Government; that the mutawalli does not acquire on his appointment any new right of suit or a fresh starting point of limitation; and that the suit is governed by Article 142, the date of dispossession being the starting point of limitation. In *Sarangadeva Periyamatam* v. *Ramaswami Goundar*[5], the Supreme Court holds that under Article 144 limitation for a suit by a math or by any person representing it for possession of immovable property belonging to it runs from the time when the possession of the defendant became adverse to the plaintiff; that if there is a legally appointed matadhipathi he may institute a suit on its behalf, if not, a *de facto* matadhipathi may do so; and where necessary a disciple or other beneficiary of the math may take steps for vindicating its legal rights by the appointment of a receiver having authority to sue on its behalf or by the institution of a suit in its name by a next friend appointed by the Court; that the running of limitation against the math under Article 144 is not suspended by the absence of a legally appointed matadhipathi or a *de facto* matadhipathi; that if before the appointment of a matadhipathi limitation under Article 144 has commenced to run against the math the appointment does not give either the math or the matadhipathi a new right of suit or a fresh starting point of limitation; and that where without legal necessity a matadhipathi has granted a permanent lease for a fixed rent, and after his death the lessee ceases to pay any rent continuing however in possession on his own behalf, adverse possession of the demised properties commences to run against the math on the death of the matadhipathi who granted the lease within the meaning of section 28 and Article 144, and the running of time will not be suspended till a successor to the deceased matadhipathi is appointed. *Ameer Bibi* v. *Chinnammal*[6], states that a silent possession by a co-tenant, accompanied by no overt act amounting to an ouster or constituting notice to the other co-tenant that his possession is adverse, ought not to be construed as adverse possession, but the ouster need not be a violent or intimidating expulsion of the other co-tenant; and the acts that might constitute adverse possession as between strangers do not necessarily have such effect as between co-owners or tenants in common.

CIVIL PROCEDURE CODE.

In *Srinivasulu Naidu* v. *Munuswami Naidu*[7], it is pointed out that section 9, Civil Procedure Code, is in very broad terms stating that all suits of a civil nature are

1. (1967) 2 M.L.J. 480.
2. (1967) 1 M.L.J. (S.C.) 141.
3. (1967) 1 M.L.J. (S.C.) 4.
4. (1967) 2 M.L.J. (S.C.) 58.
5. (1967) 1 M.L.J. (S.C.) 154.
6. (1967) 1 M.L.J. 461.
7. (1967) 1 M.L.J. 371.

within the jurisdiction of the Court except those of which cognisance is either expressly or impliedly barred; that the Explanation to the section does not confine the limits of the nature of the suits contemplated by the main section; that the section takes within its broad sweep all questions where one person claims any privilege in himself as against others; that it cannot be assumed that only a right which is claimed in relation to a temple or the right to receive religious honours or privileges attached to an office as its perquisite or remuneration could be agitated under the section; and that the claim that a person is entitled to run a customary bull race in a village during the month of Thai-Masi and that no one else has that right is a right of a civil nature and a suit for declaration and for permanent injunction restraining others from interfering with that right is cognisable under section 9. *Varadaraja Mudaliar* v. *Kannammal*[1], lays down that where, with respect to an estate notified and taken over by the Government, the rival parties to a petition filed before the Estates Abolition Tribunal claiming the compensation amount agreed to have the matter decided by the civil Court and accordingly one of them filed a civil suit it was not open to the other party to question the jurisdiction of the civil Court to entertain it. *N. P. Devaki Amma* v. *K. V. P. Narayana Pillai*[2], decides that where pending a mortgage suit the mortgagee acquired paramount title to the mortgaged property he is not bound to plead it in the mortgage suit and a subsequent suit by him based on the paramount title would not be barred by the principle of constructive *res judicata* in section 11 *Explanation* IV. *Gowrammal* v. *Lingappa Gowdar*[3], states that where the Court which passed the decree continued to exist, an order transferring the decree should be obtained from that Court before it could be put into execution in a Court which might subsequently come to have jurisdiction over the properties in suit, that is to say the subject-matter. *Rangaswami Gowndar* v. *Easwaramurthi Gowndan*[4], makes it clear that section 66 prohibits any claim based on a Court-auction purchase being benami; that the whole policy behind the section is to avoid secret purchases or manipulated deals smacking of fraud or which will be prejudicial to a decree-holder by the judgment-debtor attempting to get at the property through a benami purchase for him; that sub-section (1) forges an absolute ban against a plaintiff basing his title on the ground that a purchase at a Court-auction sale by a third party was on his behalf; and the ban is not confined merely to a plaintiff claiming the entirety of the property covered by the Court-auction purchase but also to a plaintiff claiming a part of it only. *State of Madras* v. *Ramalinga Reddiar*[5], expresses the view that as far as suits against Government *simpliciter* are concerned notice under section 80 is a pre-requisite, and it cannot be said that notice is not required in respect of suits for such acts as require restraint by an injunction which will be not past acts but acts *in futuro*; that it is difficult to conceive of a suit even from an injunction *simpliciter* against a public officer which does not have referene to some action in the past upon which that authority has based it, may be a claim of right or a notice or threat to do something, within what that authority regards as the scope of his power; and that every suit including a suit for injunction will have some reference to a past state of right, claim or denial and hence will fall within the ambit of section 80. *Neelakantan* v. *Bakthavatsalam*[6], points out that where a suit has been properly instituted under section 92 after obtaining the sanction of the Advocate-General any amendment sought for in the suit subsequently by way of addition of party which is merely formal and does not alter the nature of the suit does not require a further sanction of the Advocate-General; and where a suit was originally instituted against the Secretary of a charitable trust registered under the Societies Registration Act after obtaining the requisite sanction under section 92, an application subsequently to implead the Society itself as a party to the suit is maintainable and it does not require a fresh sanction from the Advocate-General. In *Bapuswami* v. *Pattay Gounder*[7], the Supreme Court states that the High Court in second appeal cannot interfere with the concurrent finding of fact that the value of the property conveyed under the suit document

1. (1967) 2 M.L.J. 57.
2. (1967) 1 M.L.J. 399.
3. (1967) 1 M.L.J. 281.
4. (1967) 2 M.L.J. 162.
5. (1967) 2 M.L.J. 131.
6. (1967) 1 M.L.J. 29.
7. (1967) 2 M.L.J. (S.C.) 8.

was Rs. 8,000. *Veerappa Mudaliar* v. *Venugopala Mudaliar*[1], makes it clear that the finding with regard to the age of a person at a particular time is a finding of fact which cannot be further canvassed in second appeal. *Rangaswami Reddiar* v. *Gunnammal*[2], observes that the High Court would not ordinarily interfere under section 115 with the exercise of discretion by the Courts below, but when such exercise is vitiated by failure to bear in mind the principles on which the discretion should be exercised and the material grounds which could affect the exercise of discretion have been lost sight of, the High Court can properly interfere. *Rajaram* v. *Anantaram*[3], holds that the provisions of Order 1, rule 10 are capable of both a narrower and a wider interpretation ; that while a necessary party has every right to get impleaded even a proper party may in certain circumstances seek such a relief ; that the Court must primarily consider whether the presence of the proposed party would advance the total and satisfactory adjudication of the subject-matter in controversy ; that in such cases the Court has a wider discretion to implead a party if it considers the presence of such a party essential or even desirable in the interest of justice ; and that in a suit for dissolution of partnership and accounts in which one of the partners is the head of a Hindu joint family the son of such partner may be impleaded as a party in the suit so as to enable him to protect the interests of he family assets. *Arunachalam Pillai* v. *Velamma*[4], makes it clear that Order 2, rule 2tdoes not require that when a transaction gives rise to several causes of action the plaintiff must combine all the causes of action in one suit and if necessary base his claim alternatively on them in the same suit ; that the requirement of the rule is that where there is a cause of action the plaintiff cannot split it into parts and claim relief in parts by several actions ; and that the several clauses in Order 2, rule 2 must be read together and along with Order 2, rule 3. *State of Madras* v. *Charles Harold Simpson*[5] points out that Order 2, rule 2, which relates to pleadings and not to trial of suits has not been made applicable to proceedings under the Travancore-Cochin Forest Act, 1952, and hence Order 2, rule 2 will have no application to enquiries under section 8 of that Act. *A. A. Karim Sahib* v. *A. Shanmugha Mudaliar*[6], takes the view that the object of the rule allowing amendment to the plaint is to avoid multiplicity of suits and even a new cause of action can well be allowed to be taken by way of amendment provided it is only an alternative plea, and though a suit has to be decided on the facts and circumstances existing at the date of its institution there may yet be circumstances to warrant a Court taking into consideration supervening events as well in the interests of justice, and in some cases it will almost be the duty of the Court to take note of such events brought to its notice, and the discretion of the Court under its inherent powers to adjust the rights of parties on the basis of such events is well recognised and accepted as a principle of justice, equity and good conscience. *Sengalanigramani* v. *Subbayya Nadar*[7], decides that, in a suit by the plaintiff for recovery of possession from the defendant on the basis of the plaintiff's title the defendant cannot seek to implead the plaintiff's vendor as a party to the suit on the ground that the property was agreed to be sold to him by such person and that the plaintiff had notice of it ; and the remedy of the defendant, if any, will be to enforce his agreement with the plaintiff's vendor, and apply for stay of proceedings in the plaintiff's suit for possession. *Concord of India Insurance Co., Ltd.* v. *Kaveri Ammal*[8], states that under Order 8-A, rule 5, as applicable to Madras, the directions for contribution or indemnity by a third party can be asked for " at or after the trial of the suit ", and an appeal being a continuation of the suit, such directions can therefore be asked for even after the appeal is disposed of ; and the third party procedure can be availed of against a person already on record. *Gopal Gounder* v. *Ambujammal*[9], holds that when a suit was dismissed on counsel reporting no instructions, but the plaintiff was present in Court, the proper procedure will be not to file an application under Order 9, rule 9 but to treat the disposal as one under Order 1, rule 3 and take an appeal from the order. *Lakshmana Chettiar* v. *Vadivelu Ambalam*[10], lays down

1. (1967) 1 M.L.J. 96.
2. (1967) 2 M.L.J. 201.
3. (1967) 1 M.L.J. 36.
4. (1967) 2 M.L.J. 490.
5. (1967) 2 M.L.J. 302.
6. (1967) 2 M.L.J. 468.
7. (1967) 1 M.L.J. 275.
8. (1967) 2 M.L.J. 446.
9. (1967) 2 M.L.J. 502.
10. (1967) 1 M.L.J. 252.

that where a witness is not under the control of the party asking for a Commission and he resides beyond the limits fixed under Order 16, rule 19, it would be a proper exercise of judicial discretion to issue the Commission if the evidence of the witness is essential for the party seeking to have him examined. In *Gopalakrishna Pillai* v. *Meenakshi Ayal*[1], the Supreme Court observes that where a suit is for the recovery of possession of immovable property and for past mesne profits the Court has ample power to pass a decree directing an enquiry as to future mesne profits though there is no specific prayer for the same in the plaint. *Ponniah Pillai* v. *Natarajan Asari*[2], lays down that a person who claims to be entitled to the benefit of the decree but who does not answer to the description in Order 21, rule 16, is not precluded thereunder from making an application which the person from whom he claims could have made under section 146. In *Manikyala Rao* v. *Narasimhaswami*[3], the Supreme Court indicates that where in execution sale the shares of some members of a Hindu joint family are sold the only order for delivery of possession that could possibly be made is one under Order 21, rule 35 (2) and 96, because the other members of the family whose shares have not been sold are certainly entitled to possession. *Somasundaram* v. *Senthilnathan*[4], makes it clear that in view of the express provision in Order 21, rule 63 for a right of suit against an order on a claim petition under Order 21, rule 58, no appeal will lie under clause 15 of the Letters Patent against a decision of a single Judge of the High Court in a claim petition. *Ramathal* v. *Nagarathinammal*[5] states that the restoration of an application under Order 21, rule 90 automatically operated to vacate or render ineffective the earlier order confirming the sale held in pursuance of a final decree in a mortgage action. *Parthasarathy Chetty* v. *Chitra Pillai*[6], observes that in a suit filed under Order 21, rule 103 by a person in possession who is sought to be dispossessed the questions that are tried are questions of title to the present possession and the claim to the same relief cannot be tried once over again between the same parties just because in the latter suit the title on which relief is claimed purports to be different from the one put forward by the plaintiff earlier. *Raja V. Maheswara Rao* v. *Raja V. Rajeswara Rao*[7], points out that so far as a suit for partition or a suit for redemption is concerned it is axiomatic that when the plaintiff withdraws his suit he will be entitled to file a fresh suit as the cause of action is a recurring cause of action and that even if the plaintiff is not granted permission under Order 23, rule 1, he will nevertheless have a right to file a suit for partition at any time he pleases. *Nataraja Konar* v. *Poovalingam Pillai*[8], lays down that the issue of a Commission in respect of cases falling under Order 26, rules 4 and 5, is not one of discretion but is in the nature of a statutory right of the litigant provided he is not guilty of laches, and the party to the suit has the right to ask for the issue of a Commission to examine witnesses beyond the prescribed distance. *Rani Ammal* v. *Ratnasabapathy Pillai*[9], holds that under the Explanation to Order 33, rule 1 a person would be a pauper if he is not possessed of sufficient means to enable him to pay the fee prescribed, that the test is not whether he has power of raising money in the abstract but whether in the concrete circumstances of the case he can raise anything substantial by exercising it, and that it is doubtful whether a right to enjoy a particular property for life by which the person entitled to enjoy has to eke out his livelihood from the income of the property can be considered 'means' even if an offer is made to advance funds on such right. *Govindaswami* v. *Kamalammal*[10] makes it clear that the word 'applicant' in Order 33, rule 2 refers to the minor or ward in question, that therefore, even if the next friend files an application on behalf of the minor under Order 33, rule 2 to sue *in forma pauperis* it is clear that he is doing so only for the benefit of and for the person of the minor, and there is nothing in the Code to prevent such person who was a minor and who has become a major subse-

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1. (1967) 1 M.L.J. (S.C.) 89.
2. (1967) 2 M.L.J. 281.
3. (1967) 1 M.L.J. (S.C.) 29.
4. (1967) 1 M.L.J. 25.
5. (1967) 1 M.L.J. 260.
6. (1967) 1 M.L.J. 83.
7. (1967) 1 M.L.J. 175.
8. (1967) 2 M.L.J. 369.
9. (1967) 1 M.L.J. 311.
10. (1967) 2 M.L.J. 396.

quently to continue such proceedings. *Ramathal* v. *Nagarathinammal*[1], points out that having regard to section 47 Explanation and section 146 of the Code every remedy which Order 34, rule 5 has provided against the auction purchaser can also be claimed against the purchaser from the auction purchaser : and thus, in proceedings under Order 34, rule 5 the purchaser may be directed to deliver possession. *Raghavan* v. *Venkatarama Iyer*[2], expresses the view that a receiver appointed in a mortgage suit can claim from the estate administered by him reimbursement for the amounts advanced by him to the estate during his administration and can also claim contemporaneously a lien over the liquid assets of the estate so as to take preference over the mortgage decree-holder at whose instance the estate was administered by him ; that when a Court passes a receiver's accounts which contains the items of expenditure incurred by him either by way of loans advanced by him or incurred by him under any other name it should be taken that the Court has sanctioned such expenditure and an independent sanction by the Court for the incurring of the expenditure is not required : that *a fortiori* it would be so when it is done when the accounts are passed after notice to the parties : and that even though there is a prior mortgage over the estate for which the receiver is appointed he would be entitled to a first charge for all the expenses incurred, and necessarily therefore, he has a lien over the sale proceeds of such estate if once the estate itself is sold under orders of Court.

Penal Code.

In *Kuttisamy Thevar*, In re[3] it is held that though a charge had proceeded as one under section 302 of the Penal Code read with section 149, so long as the person charged was made aware of the facts brought against him and he was not prejudiced in any way, a conviction under section 302 read with section 34 is not unsustainable: that while section 149 would appear to be of a more general kind section 34 requires evidence of a particular common intention : that before section 34 is used such a common intention must necessarily be made out : that the omission of section 34 in the charge is not conclusive : but the question would be whether such omission has caused prejudice to the caused. *Podi*, In re[4], decides that whereas the offence is culpable homicide if the bodily injury intended to be inflicted is likely to cause death, it is murder if such injury is sufficient in the ordinary course of nature to cause death : that as it is a question of probability, it will resolve itself practically into a consideration of the nature of the weapon used : and where no weapon was used and the deceased was fisted to death the offence would amount only to culpable homicide not amounting to murder. *Rathinam* v. *State S. I. of Police*[5], lays down that the offence under section 366 lies in the act of kidnapping a minor girl or abducting a woman for the purpose of her being compelled to marry against her will, and the offence would be complete irrespective of the validity of the marriagethat was gone through. In *Shivnarayan Kabra* v. *State of Madras*[6], the Supreme Court holds that for a conviction under section 420 it is not necessary that a false pretence should be made in express words : it may be inferred from all the circumstances including the conduct of accused in obtaining the property.

Criminal Procedure Code.

In *Kothandapani*, In re[7], it is pointed out that, under the Code of Criminal Procedure, while it is open to a Magistrate to accept a plea of guilty of an accused and convict him on his own admission if such admission had been put forward at the initial stage, there is no provision under which a Court can accept such a plea and base a conviction on such plea when once the prosecution evidence has been let in and the trial has commenced. *D. A. S. Swami* v. *Kubendran*[8], states that the definition of 'pleader' under section 4 (1) (r) is an exhaustive one and refers only to an Advocate, vakil or attorney on the rolls of Advocates : and any other person even

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1. (1967) M.L.J. 260.
2. (1967) 2 M.L.J. 371.
3. (1967) 2 M.L.J. 503.
4. (1967) 2 M.L.J. 74.
5. (1967) 1 M.L.J. 286.
6. (1967) 1 M.L.J. (S.C.) 159.
7. (1967) 1 M.L.J. 276.
8. (1967) 1 M.L.J. 27.

if he be a lawyer but not on the rolls of Advocates who seeks to plead on behalf of an accused can do so only with the permission of the Court; and the distinction is a reasonable one and does not violate Article 19 (1) (*f*) or (*g*) of the Constitution. *A. Kanniah,* In re[1], observes that it is well-established that a report of a Police Officer in a non-cognisable offence without investigation as required by section 155 of the Code will be a complaint as defined in section 4 (*h*), and that if the Magistrate took cognisance of an offence upon such a complaint section 249 excludes "stopping proceedings" in cases instituted, and that any memo filed by the Public Prosecutor that he would file a fresh charge sheet would show that he was not pressing the case instituted on the original complaint amounting to an implied withdrawal. *Syed Jaffar* v. *Arumugham*[2], expresses the view that there seem to be material differences between sections 145 and 147 in that while the duty to pass an order under section 147 is only discretionary section 145 (1) indicates that the Magistrate shall make an order in writting stating the grounds of his being satisfied; further unlike section 145 (4) the date of the order under section 147 (1) is not crucial or determinative of the rights of the parties: and that before an order under section 145 could be implemented there should be a clear and specific order as contemplated in section 145 (1) and a mere note by the Magistrate taking the case on file and directing issue of notice is not at all an order contemplated under the sub-section. In *Athiappa Goundar* v. *Athiappa Pandaram*[3], it is made clear that the crucial date under the second proviso to section 145 (4) is the date of the preliminary order and for the purpose of that proviso a specific period of two months next before the date of such order is fixed for invoking the fiction embodied in the proviso and there is no room for applying any such fiction relating to the date of the preliminary order to the date of the petition under section 145 (1); that the second proviso could be successfully invoked only if the party has been forcibly or wrongfully dispossessed within two months prior to the date of the preliminary order, and there is no room for applying any fiction that the date of the preliminary order should be deemed to be the date of the petition and to give relief even to persons forcibly and wrongfully dispossessed within two months prior to the date of the petition; that it is not possible to use the *maxim actus curiae neminem gravabit* to enlarge the period fixed under the proviso by applying the fiction *nunc pro tunc* and treating the preliminary order made on a later date as one passed on the date of the petition; that the maxim could be invoked and applied in individual cases to a party who has done all that he should do under the statute and is prejudiced solely by the mistake or delay of the Court; and that it is not possible to visualise how the maxim could be invoked generally to interpret the second proviso to section 145 (4) in a liberal manner. *Dhanakoti Achari* v. *Veeraswami Reddi*[4] lays down that the words "a civil Court of competent jurisdiction" in section 146 (1) have reference only to territorial jurisdiction and not to precuniary jurisdiction; and a reference under section 146 (1) can be made to a civil Court having territorial jurisdiction over the subject-matter in dispute though the value of the properties in dispute may be much in excess of the limits of the pecuniary jurisdiction of such Court; nor does the bar under section 15 of the Civil Procedure Code that every suit shall be instituted in the Court of the lowest grade competent to try it apply to proceedings forwarded to a civil Court under section 146 (1); so much so, whatever be the value of the subject-matter in dispute it is open to the Magistrate making a reference under section 146 (1) to forward the case either to the District Munsif or to such superior Court as the Sub-Court or the District Court of competent territorial jurisdiction. *Natarajan,* In re[5], expresses the view that the question whether the statement contemplated under section 161 (3) is only the statement recorded at the Police Station or will include notes jotted down by an Inspector earlier will have to be decided according to the circumstances of the case; section 161 (3) does not prevent a Police Officer from making out just the mere fact that such jottings were destroyed and it will not vitiate a trial so long as it is not part of the statement

1. (1967) 1 M.L.J. 108.
2. (1967) 1 M.L.J. 143.
3. (1967) 1 M.L.J. 392 (F.B.).
4. (1967) 2 M.L.J. 70.
5. (1967) 1 M.L.J. 366.

reduced to writing at the Police Station which alone will be relevant for purposes of Article 161 (3). *Mani*, In re[1], points out that the provisions of section 195 cannot be evaded by resort to devices or camouflage merely by changing the label of an offence which essentially falls within its scope; and where an offence falls within the section, it cannot be taken cognisance of unless it be at the instance of the concerned officer; but it is equally well-settled that section 195 cannot bar the trial of an accused for distinct offences disclosed by the same facts which are not within the ambit of the said section. *Venkataraman*, In re[2] expresses the view that the public servant for purposes of section 195 (1) (*a*) should be fixed with reference to section 175 and the determination of the public servant concerned will vary according to the particular offence concerned. In *Shivnarayan Kabra* v. *State of Madras*[3], the Supreme Court observes that when several items of cheating were part and parcel of one transaction a trial of the accused on a single charge would be permissible under section 239. *Kuppuswami*, In re[4] states that the scheme of sections 242 to 245 makes it clear that when the particulars of the offence are put to the accused under section 242 it is open to him to admit the offence under section 243; but if he does not admit, the Magistrate shall proceed to take evidence under section 244 and; pass appropriate orders under section 245: there is no provision in the Code which contemplates the filing of a memorandum by the accused admitting his guilt after the initial stage under section 243; and a conviction based on such a memorandum is not according to law and such a procedure is not justified under the Code. In *Periyasami* v. *State of Madras*[5], the Supreme Court points out that it is highly desirable that the Court should before the transfer of an earlier statement of a witness to the record of the Sessions case under section 288 indicate in a brief order why the earlier deposition was being transferred to the record of the trial so as to make it quite clear to the accused that the earlier statement is likely to be used as substantive evidence against him. *Public Prosecutor* v. *Raju Chettiar*[6], observes that when there is no legal evidence against the accused on the side of the prosecution the Magistrate will have no jurisdiction to question the accused under section 342, and there is no need at all for the accused to examine any defence witness. In *Shivnarayan Kabra* v. *State of Madras*[3], the Supreme Court holds that a breach of the requirements of section 361 (1) is a mere irregularity and will not vitiate a trial unless prejudice is caused to the accused thereby; and when the irregularity has not resulted in injustice, section 537 can be applied to cure the defect. *Murugesa Mudaliar* v. *Ramachandran*[7], expresses the view that a Magistrate exercising powers under section 101 of the Madras Hindu Religious and Charitable Endowments Act, 1959, is acting as a *persona designata* and not as a Court, much less an inferior criminal Court whose orders are revisable under sections 435 and 439. *Appachan* v. *Raju Gownder*[8], makes it clear that under the proviso (*b*) to section 437 the Sessions Judge or the District Magistrate may direct further enquiry where the evidence shows that "such other offence," namely an offence other than one triable exclusively by the Court of Session has been committed; that in the case of 'such other offence' there could not be any question of direct commitment, and that is why further enquiry is contemplated; a limitation that the words "such other offence" must also relate only to an offence triable exclusively by the Court of Session should not be placed either as a matter of construction or on the reason of the thing; and those words are so general that they would cover an offence not triable exclusively by a Court of Session and the Sessions Judge has jurisdiction to order further enquiry in respect of some offences. In *Kuppa Goundan* v. *M. S. P. Rajesh*[9], the Supreme Court points out that if a Court is of the opinion that it is expedient in the interests of justice that an enquiry should be made into any offence refered to in section 195 (1) (*b*) or (*c*) which appears to have been committed in

1. (1967) 1 M.L.J. 33.
2. (1967) 1 M.L.J. 447.
3. (1967) 1 M.L.J. (S.C.) 159.
4. (1967) 1 M.L.J. 23.
5. (1967) 2 M.L.J. (S.C.) 41.
6. (1967) 2 M.L.J. 496.
7. (1967) 1 M.L.J. 379.
8. (1967) 1 M.L.J. 270.
9. (1967) 1 M.L.J. (S.C.) 93

or in relation to a proceeding in that Court such Court may, after preliminary enquiry, if any, as it thinks necessary record a finding to that effect and make a complaint in writing and forward the same to a Magistrate of the First Class having jurisdiction as per the procedure prescribed in section 476; that for applying section 479-A it is a necessary condition that the Court before it delivers its judgment or at any rate at the time of delivering it must form the opinion that a witness is giving false evidence; that if the Court could not form any opinion that the witness is giving false evidence it means that the Court cannot at the time of delivering the judgment record any finding about the same; and the bar of section 479-A (6) will not apply in a case where perjury is detected not merely with reference to the evidence adduced at the trial but with reference to the evidence adduced in some other proceeding not then brought before the Court, or where there is some other material subsequently produced after the conclusion of the trial and delivery of judgment which renders the prosecution necessary in the interests of justice. *Rangaswami Reddiar* v. *Gunnammal*[1], states that the bar under section 479-A (6) cannot apply where, after the disposal of the case, it is discovered that the judgment had been secured by perjured or false evidence; and that in regard to cases which do not strictly fall under section 479-A and no action is possible under that section even in respect of an offence referred to in section 193 and cognate offences in Chapter XVI of the Penal Code the procedure prescribed in section 476, Criminal Procedure Code, can be followed. *Poovathai Udayyar*, In re[2], holds that the provision in section 479-A (1) about the need for the Court intending to making a complaint to record the necessary finding at the time of delivering the judgment is mandatory; and that even if the Court finds that a person has deliberately given false evidence, it will not be a sufficient compliance with the section unless it also finds that a prosecution is necessary for the purpose of eradicating the evil of perjury and that it is also expedient in the interests of justice. In *A. Katta Mallu* v. *Chandra Rao*[3], it is made clear the the words " any offence under the Penal Code " in section 562 (1-A) cannot be read *ejusdem generis* with the offences which are mentioned earlier (which are connected with property, and are punishable with more than two years imprisonment); that the clause stands by itself and indicates that all offences punishable with not more than two years imprisonment are also capable of being dealt with under section 562 (1-A); that offences against property are all included in Chapter XVII of the Penal Code and if it was desired to limit the operation of the section to offences against property, it would have been the easiest thing to have mentioned the XVII Chapter of the Penal Code.

End.

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1. (1967) 2 M.L.J. 201.
2. (1967) 1 M.L.J. 451.
3. (1967) 2 M.L.J. (S.C.) 65.